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No. 544

TRANSCRIPT OF RECORD.

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT.

No. 16,291

SEARS, ROEBUCK & COMPANY and ALLSTATE INSURANCE COMPANY,

Appellants,

versus

ALL STATES LIFE INSURANCE COMPANY,

Appellee.

Appeal from the United States District Court for the Northern District of Texas.

U.S. COURT OF APPEALS
FILED
FEB 14 1957
EDWARD W. WADSWORTH
CLERK

(ORIGINAL RECORD RECEIVED AUG. 24/56.)

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CAPTION.

BE IT REMEMBERED, that at a session of the United States District Court in and for the Northern District of Texas, held at Dallas, Texas, the Honorable William H. Atwell, United States District Judge for the Northern District of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 6318 Civil.

SEARS, ROEBUCK & COMPANY, a corporation and ALLSTATE INSURANCE COMPANY, a corporation,

versus

ALL STATES LIFE INSURANCE COMPANY, a corporation.

COMPLAINT.

Filed Dec. 6, 1955.

(Title Omitted.)

To the Honorable Judge of said Court:

Plaintiffs, Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, for cause of action against the defendant, All States Life Insurance Company, complain and allege:

I.

Plaintiff, Sears, Roebuck & Company, is a corporation duly organized and existing under the laws of the State of New York, with its principal office and place of business in the City of Chicago, Illinois; the plaintiff, Allstate Insurance Company, is a corporation duly organized and existing under the laws of the State of Illinois, with its principal office and place of business in the City of Skokie, Illinois. Each of the plaintiffs during all of the time material to this suit had, and have, a permit to do business in the State of Texas and have been, and are, doing business in the State of Texas. Both plaintiffs are engaged in their respective businesses in various states of the United States and are engaged in interstate commerce.

The defendant, All States Life Insurance Company, is a corporation duly organized and existing under the laws of the State of Texas, with its principal office and place of business in the City of Dallas, Dallas County, Texas.

That the amount in issue exceeds Three Thousand Dollars ($3,000.00) and this Court has jurisdiction by virtue of Title 28, Sections 1331, 1332 and 1338, and Title 15, Sections 1121, 1125(a) and 1126, U. S. C.

II.

Plaintiff, Sears, Roebuck & Company is, and has been for many years, a corporation engaged in the business of distributing and selling various items of merchandise in its stores located in all states of the United States and to other customers through its

catalogue service. In 1926, the plaintiff, Sears, Roebuck & Company, began use of the trade-mark "Allstate" and said mark was registered as a trade-mark in 1927 and continuously since the year 1927 the plaintiff, Sears, Roebuck & Company has merchandised and sold various and sundry articles relating to automobiles and automobile accessories under the trademark "Allstate." In recognition of plaintiff's, Sears, Roebuck & Company's rights in the trade-mark "Allstate", the United States Patent Office has granted to this plaintiff a large number of registrations covering said mark, copies of which registrations are attached hereto as Exhibits ... and .... During the twenty-nine years in which said trade-mark "Allstate" has been used by plaintiff, Sears, Roebuck & Company, the trade-mark "Allstate" has come to be recognized by the public as the trade-mark which stands for quality and integrity and, through the use of said trade-mark and the efforts in customer dealing and relationship which plaintiff, Sears, Roebuck & Company, has used with said trade-mark, said plaintiff has acquired a reputation throughout the United States for honesty, fair dealing and business integrity. By reason of said facts, the trade-mark "Allstate" has long had extensive good will value inuring to the benefit of plaintiff, Sears, Roebuck & Company, and said mark has represented to the purchasing public throughout the United States goods and services of the highest type and character.

III.

In 1931, the plaintiff, Allstate Insurance Company, was organized by Sears, Roebuck & Company, and for the past fifteen years has been a totally owned subsidiary corporation of plaintiff, Sears, Roebuck &

Company and since 1931, has been engaged in the business of writing automobile insurance of all types, as well as various other kinds of insurance coverage, throughout each and every state of the United States. During the years since 1931, the plaintiff, Allstate Insurance Company has, through honesty, fair dealing and integrity, acquired a reputation throughout the United States for efficient, prompt and courteous insurance service and has provided its insurance customers with low cost automobile insurance and efficient claim handling. Plaintiff, Allstate Insurance Company, has thus acquired a reputation throughout the United States for honesty, fair dealing and business integrity. The Allstate Insurance Company has at present over 3,000,000 policyholders. In 1954, it had an annual premium volume in excess of $209,000,000 and paid out $73,645,504 in claims. In the State of Texas. the Allstate Insurance Company has more than 132,000 policyholders. In 1954, it had a premium volume in excess of $9,235,000 and paid out $2,780,337 in claims. The Allstate Insurance Company is at present one of the largest automobile insurers in the State of Texas and is the largest writer of automobile insurance in the world. By reason of the aforesaid facts the name "Allstate" has long had an extensive good will value inuring to the benefit of plaintiff, Allstate Insurance Company, and said name has represented to the purchasing public throughout the United States insurance services of the character above mentioned furnished by the plaintiff, Allstate Insurance Company. This good will has also inured to the benefit of plaintiff, Sears Roebuck & Company, as Allstate insurance is known to the public to be associated with the plaintiff, Sears, Roebuck & Company, and is marketed through the stores of said Company.

IV.

Allstate Insurance Company is licensed and is doing business in all of the states of the United States and most of the provinces of Canada, and since July 1, 1936, the plaintiff, Allstate Insurance Company, has had a permit from proper authorities to do business in the State of Texas and has been writing, and expects to continue to write, all types of automobile insurance, as well as other kinds of insurance coverage, in its name of Allstate Insurance Company. The plaintiff, Allstate Insurance Company, has two branch offices in the State of Texas, one in Dallas nad one in Houston There are over five hundred Allstate Insurance Company employees in the State of Texas and the annual payroll for such employees is in excess of $2,000,000. Nationwide, the Company has twenty-six branch offices and has more than ten thousand employees. It has derived great benefit, and will continue to derive great benefit, from the use of the name Allstate Insurance Company and the use of its parent company's trade-mark "Allstate."

V.

Both plaintiffs, in the use of their trade-mark and service name "Allstate," have commonly displayed said word "Allstate" superinscribed over a map of the United States, so that the public has come to recognize the association of said word and map as indicating the origin of such goods and services exclusively provided by plaintiffs. A replica of such insignia is attached hereto as Exhibit "A". In publicizing and advertising the name "Allstate" and the Allstate insignia, the Allstate Insurance Company has, since the year 1947, incurred $8,692,496 in advertising expense.

During the year 1955, almost $3,000,000 will be expended by the plaintiff, Allstate Insurance Company, for advertising and more than $100,000 of this money has been, and will be, expended in the State of Texas in 1955. All of these expenditures have been made for the purpose of publicizing the name "Allstate" nd the product, namely Allstate insurance.

VI.

On July 1, 1955, defendant, All States Life Insurance Company, was incorporated under the laws of the State of Texas. Since that date, defendant has embarked upon an extensive publicity campaign in con nection with the public offering of securities of defendant corporation and has embarked, or is planning to embark, on an equally extensive, if not more extensive, program for the sale of life insurance offered for sale by said corporation. In connection with its publicity campaign, the defendant has prominently displayed on prospectuses and other advertising literature a symbol of the map of the United States with the words "All States Life Insurance Company" imposed upon said map, which symbol and mark is for all practical purposes exactly similar to the mark long displayed by the plaintiffs, Sears, Roebuck & Company and Allstate Insurance Company. A replica of such insignia is attached hereto as Exhibit "B".

Because of the close similarity of the name All States Life Insurance Company to the name Allstate Insurance Company and the trade-mark "Allstate" and because of the close similarity between the insignia displayed by the defendant, All States Life Insurance Company, and that insignia long displayed and used by the plaintiffs, Sears, Roebuck & Company and Allstate Insurance Company, great confusion has

been caused in the minds of the public. Because of said confusion, the public is being misled into believing that the defendant, All States Life Insurance Company, is in truth and in fact connected with or a subsidiary of or related to either of the plaintiff corporations. The public is, therefore, being misled into thinking that the defendant, All States Life Insurance Company, is owned by, connected, or affiliated with plaintiffs, Sears, Roebuck & Company and Allstate Insurance Company, and that the same reputation for honesty, fair dealing and business integrity is behind the defendant, All States Life Insurance Company, whereas in truth and in fact there is no connection whatsoever between the plaintiff corporations and the defendant, All States Life Insurance Company.

Such activities on the part of defendant constitute an infringement on the trade name, service mark and trade-mark of plaintiffs and a deception and fraud upon the public. Further in this connection, plaintiffs allege that, by virtue of their prior adoption of the trade-mark "Allstate" and the name "Allstate Insurance Company" and their continuous use by plaintiffs since 1927 and 1931, respectively, these plaintiffs have acquired the right to the exclusive use of such trade-mark and trade name, and that such trademark and trade name have come to have a secondary meaning with the public in general in Texas, as well as elsewhere in the United States and foreign countries, in that the trade-mark "Allstate" and the trade name "Allstate Insurance Company" have become associated in the minds of the public generally with the products and services provided by these plaintiffs; that such activities on the part of defendant as above described constitute unfair competition and are in derogation of the rights of plaintiffs to

enjoy the exclusive use of said mark and name by virtue of their prior appropriation thereof.

VIII.

Because of the actions herein complained of, plaintiffs demand an accounting for all gains, profits and advantages derived by defendant by said unfair trade practices and unfair competition, as well as all gains, profits and advantages derived by defendant because of its infringement of plaintiffs' trade-mark, all of which damages plaintiffs allege to be in excess of the sum of $10,000.

IX.

Plaintiffs allege that, unless enjoined from so doing, defendant will continue to trade on the good reputation of plaintiffs and infringe on their right to the exclusive use of the trade-mark "Allstate" and the trade name "Allstate Insurance Company" and will continue to defraud, mislead and deceive the public generally throughout the State of Texas and the United States and, unless restrained, the defendant will do each of the plaintiffs irreparable injury, for which there is no adequate remedy at law.

Wherefore, plaintiffs each demand judgment as follows: (1) That defendant be permanently enjoined from using the name "All States Life Insurance Company" or any name confusingly similar thereto in connection with the conduct of its insurance business; (2) that defendant be permanently enjoined from using the name "All States Life Insurance Company" and the trade-mark "Allstate" or any name or mark confusingly similar thereto, or either of them, in its advertising material, letterheads, insurance policies, stationery, business cards, signs, or in any other way

or manner; (3) that defendant, its agents, servants, employees and brokers; be permanently enjoined from representing or in any manner leading prospective customers to believe that the defendant is owned by, connected, or affiliated with or sponsored by plaintiffs or either of them, and from in any manner trading on or using in any connection the trade-mark and trade name of plaintiffs; (4) that the defendant be permanently enjoined from using as a trade-mark or trade symbol that symbol which it is presently using, or any trade-mark or trade symbol which is so similar to that used by the plaintiffs as to be confused with that used by the plaintiffs; and (5) that defendant be required to pay to plaintiffs such damages as plaintiffs have sustained in consequence of defendant's infringement of said trade-mark and trade name and said unfair trade practices and unfair competition in an amount in excess of Ten Thousand Dollars ($10,000) and to account for (a) all gains, profits and advantages derived by defendant by such trade practices and unfair competition; and (b) all gains, profits and advantages derived by defendant by its infringement of plaintiffs' trade-mark, or such damages as to the Court shall appear proper within the provisions of the copyright statutes, Title 15, Section 1117, U. S. C., but in any event not less than Ten Thousand Dollars ($10,000), and for such other and further relief to which plaintiffs and each of them may be entitled in the premises.

Respectfully submitted,
PINKNEY GRISSOM,
(Pinkney Grissom),
TIMOTHY E. KELLEY,
(Timothy E. Kelley),
Attorneys for Plaintiffs.

Of Counsel:
THOMPSON, KNIGHT, WRIGHT & SIMMONS,
2300 Republic National Bank Building,
Dallas, Texas.

SUPPLEMENT TO COMPLAINT.

Filed December 8, 1955.

Plaintiff, Sears, Roebuck & Company and Allstate Insurance Company, herewith tender to the Court their Exhibits Nos. C through Z, which exhibits cover the registrations granted to plaintiff, Sears, Roebuck & Company in the trade mark "Allstate", which are referred to in Paragraph 2, Page 2 of plaintiff's complaint.

Respectfully submitted,
THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
By TIMOTHY E. KELLEY,
Attorneys for Plaintiff.

2300 Republic National Bank Building,
Dallas, Texas.

PLAINTIFFS' AMENDED COMPLAINT.

Filed May 7, 1956.

(Title Omitted.)

To the Honorable Judge of said Court:

Plaintiffs Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, with leave of Court respectfully amend their Original Complaint by adding thereto the following allegations:

X.

Plaintiffs would show that on or about the 8th day of March 1952 the Plaintiff Allstate Insurance Company did file with the Patent Office of the United States of America, pursuant to the provisions of the Trademark Act of 1946 as amended, its service marks, one of which consists of the name "Allstate" and the other of which consists of a symbol with the caption "You're in good hands with Allstate" and that on or about the 21st day of February, 1956, the said service marks were duly registered on the Principal Register of the United States Patent Office, as more specifically shown by Exhibits "AA" and "BB" attached hereto.

XI.

Plaintiffs would further show that Plaintiff Allstate Insurance Company is commonly thought of by the public, and referred to as "All State" Insurance Company; that the public does not distinguish between the word "Allstate" and the words "All State" and Plaintiff Allstate Insurance Company receives mail

and checks addressed to it in either of such forms and has been referred to in newspaper articles in both of such forms.

XII.

This Court has jurisdiction, in addition to the grounds alleged heretofore in Plaintiffs' Original Complaint, under the common law and also under the Lanham Trade-Mark Act, Act of July 5, 1946, 60 Stat. 427, found in 15 U.S.C., Sections 1051 to 1127, as amended.

Wherefore, Plaintiffs pray as they have heretofore prayed.

Respectfully submitted,
PINKNEY GRISSOM,
(Pinkney Grissom),
Attorneys for Plaintiffs.

2300 Republic Bank Building,
Dallas, Texas.

THOMPSON, KNIGHT, WRIGHT & SIMMONS,
Of Counsel.

NOTICE

Section 8 (a) of the Trademark Act of 1946 requires the filing, between the end of the fifth year and the end of the sixth year following the date of this registration, of an affidavit showing that the mark is still in use. The affidavit should contain facts showing that the mark is still in use, such as, the annual sales volume and advertising expenditures in connection with the mark, or a specimen showing the mark as then used, or both; or if the mark is not then actually being used, the affidavit should recite facts to show that the nonuse is excusable and not due to any intention to abandon the mark.

Registrant is hereby notified that failure to file the affidavit during the sixth year will result in cancelation of the registration.

U. S. GOVERNMENT PRINTING OFFICE 2000000-9

13

NOTICE

☞ *This Registration will be canceled by the Commissioner of Patents at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.*

United States Patent Office

621,917
Registered Feb. 21, 1956

PRINCIPAL REGISTER
Service Mark

Ser. No. 626,130, filed Mar. 8, 1952

ALLSTATE

Allstate Insurance Company (Illinois corporation)
Chicago, Ill.

For: UNDERWRITING OF INSURANCE RISKS—NAMELY, AUTOMOBILE INSURANCE (FIRE, THEFT, PROPERTY DAMAGE, PERSONAL LIABILITY, ETC.), COMPREHENSIVE LIABILITY AND MEDICAL LIABILITY INSURANCE—in CLASS 102.

First used on or about Apr. 17, 1931; in commerce on or about Apr. 17, 1931.

NOTICE

☛ *This Registration will be canceled by the Commissioner of Patents at the end of six years following the date of registration, unless within one year next preceding the expiration of such six years, the registrant file in the Patent Office an affidavit showing that said mark is still in use or showing that its nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.*

United States Patent Office

621,918
Registered Feb. 21, 1956

PRINCIPAL REGISTER
Service Mark

Ser. No. 626,131, filed Mar. 8, 1952

Allstate Insurance Company (Illinois corporation)
Chicago, Ill.

For: UNDERWRITING OF INSURANCE RISKS—NAMELY, AUTOMOBILE INSURANCE (FIRE, THEFT, PROPERTY DAMAGE, PERSONAL LIABILITY, ETC.)—in CLASS 102.

First used on or about Sept. 15, 1950; in commerce on or about Sept. 15, 1950.

NOTICE

Section 8 (a) of the Trademark Act of 1946 requires the filing, between the end of the fifth year and the end of the sixth year following the date of this registration, of an affidavit showing that the mark is still in use. The affidavit should contain facts showing that the mark is still in use, such as, the annual sales volume and advertising expenditures in connection with the mark, or a specimen showing the mark as then used, or both; or if the mark is not then actually being used, the affidavit should recite facts to show that the nonuse is excusable and not due to any intention to abandon the mark.

Registrant is hereby notified that failure to file the affidavit during the sixth year will result in cancelation of the registration.

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DEFENDANT'S AMENDED MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND FOR FAILURE TO JOIN AN INDISPENSABLE PARTY.

Filed May 14, 1956.

(Title Omitted.)

To the Honorable Judge of said Court:

The defendant moves the Court to dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted and because the plaintiffs have failed to join an indispensable party; and as grounds therefor would respectfully show the Court the following:

1.

Congress has encouraged regulation and supervision of insurance companies by the several states. The McCarran Act provides, in part:

Tit. 15, § 1011, U. S. Code.

"Congress declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."

Tit. 15, § 1012, U. S. Code.

"(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

2.

Pursuant to such Federal sanction, the Legislature of The State of Texas has adopted a comprehensive Insurance Code (Art. 1.01—21.44 Vern. Ann. Civ. Stats.) for the chartering, licensing, regulation and supervision of all insurance companies transacting business in this state. Plaintiff Allstate Insurance Company and the defendant are subject to this regulation and supervision, and under the provisions of such Code, the corporate name of each company transacting business in this state must be approved by the Board of Insurance Commissioners of this state, and in the absence of such approval, said Board has the power to deny or revoke licenses to transact insurance business in this state.

3.

The defendant was chartered by the Board of Insurance Commissioners on July 1, 1955, and was licensed by said Board to transact life insurance business on July 25, 1955. By chartering and licensing

the defendant, the Board of Insurance Commissioners approved the name of the defendant and made the decision that it was permissible for the defendant to use the corporate name "All States Life Insurance Company" and that such name was not confusingly similar to the name of plaintiff Allstate Insurance Company.

4.

Plaintiffs formally protested the decision of the Board of Insurance Commissioners by written protest dated October 31, 1955, copy of which is annexed, marked "Exhibit A." The Board of Insurance Commissioners refused to grant the relief sought by the protest of plaintiffs, and copy of letter dated November 21, 1955, from the Board, advising the defendant of such denial is attached, marked "Exhibit B."

5.

Plaintiffs, dissatisfied with the decisions, acts, orders and administrative rulings of the Board by which the defendant was chartered, licensed and permitted to use its name and by which the relief sought by plaintifs was denied, have brought this action in this Honorable Court to obtain relief from the Board's decisions, acts, orders and administrative rulings. However, such action should not have been brought in this Honorable Court. Article 2144 of the Insurance Code of Texas provides:

"Except where otherwise provided for under the provisions of the Insurance Code, if any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the Board of In-

surance Commissioners, such dissatisfied company or party at interest, after failing to get relief from the Board of Insurance Commissioners, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Such action shall have precedence over all other causes on the docket of a different nature. The action shall not be limited to questions of law and the substantial evidence rule shall not apply, but such action shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the Justice Court to the County Court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause and said appeal shall be at once returnable to said Appellate Court having jurisdiction of said cause and said action so appealed shall have precedence in said Appellate Court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder." (Underscoring ours).

6.

The judicial review provided for by Article 21.44 supra constituted an adequate remedy at law, and, therefore, this action being for an injunction, the plaintiffs have failed to state a claim upon which relief can be granted. Moreover, this Honorable Court should deny jurisdiction in the interest of promoting orderly administration of the functions of the Board

of Insurance Commissioners and judicial review of its acts and decisions in a forum convenient to it; as is provided in Article 21.44.

7.

This action, clothed as a trademark case, constitutes an attempted collateral attack upon the acts and decisions of the Board of Insurance Commissioners. Germane to any service mark for insurance is the name of the company. This defendant is without power to use a name unsatisfactory to the Board of Insurance Commissioners. The Board is an indispensable party to any action to require the defendant to change its name.

8.

Plaintiff Allstate Insurance Company is a foreign corporation, licensed to transact casualty insurance business in this state and engaged in such business within this state, and is a subsidiary of plaintiff Sears, Roebuck & Company. Under the provisions of Article 21.43 of the Insurance Code, plaintiff Allstate Insurance Company has assented to all of the provisions of the Insurance Code:

"Art. 21.43—Foreign Insurance Corporations. The provisions of this Code are conditions upon which foreign insurance corporations shall be permitted to do business within this State, and any such foreign corporation engaged in issuing contracts or policies within this State shall be held to have assented thereto as a condition precedent to its right to engage in such business within this State."

This consent constitutes not only an agreement to be bound by the provisions of Article 21.44 that action for judicial review be brought in The District Court of Travis County, Texas, and not elsewhere, but also

constitutes consent to the following provisions in the Insurance Code which prohibit plaintiffs from instituting or maintaining any action to enjoin, restrain or interefere with the business of the defendant:

"* * * The Board shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the laws of this State relating to insurance. No action shall be brought or maintained by any person other than the Board for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State." (Art. 1.19. Underscoring ours.)

"Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any person other than the Board of Insurance Commissioners for the enjoining, restraining or interfering with the prosecution of the business of the company." (Art. 3.63)

"If the Board shall at any time from the report of examination determine that such company has not complied with any provision of this law, said Board shall revoke its certificate of authority to do business in this State and shall refer the facts to the Attorney General, who shall proceed to ask the proper Court to appoint a receiver for said company, who shall, under the direction of the Court, wind up the

affairs of said company. In no other way can the Board or any other person restrain or interfere with the business of any company doing business under the provisions of this chapter, except in actions by judgment creditors or in proceedings supplementary to execution." (Art. 8.11)

(Underscoring ours.)

Accordingly, plaintiff Allstate Insurance Company is without power to institute or maintain this action, and it should not be permitted to do indirectly, through its parent corporation, what it is not permitted to do directly.

9.

The choice of names of insurance companies is very limited. Unlike the usual mercantile corporation, the name of an insurance company must necessarily connote strength or geographical area. For example, in addition to the parties to this action, eleven insurance companies[1] licensed to do business in this state

[1] States Assurance Company, Ltd., State Automobile Insurance Association, The State Farm Fire & Casualty Company, State Farm Life Insurance Company, State Farm Mutual Automobile Insurance Company, State Life Insurance Company, State Mutual Life Insurance Company, State Reserve Life Insurance Company, State Security Life Insurance Company, States General Life Insurance Company. (In addition at least one other insurance company licensed in this state has the word "All" in its corporate title: All American Assurance Company).

have the word "state" or "states" as a part of their corporate name. The business of keeping a record of the names of insurance companies licensed in this state and passing upon the similarity or dissimilarity of such names is a proper matter for the Board of Insurance Commissioners and would be an intolerable burden upon this Honorable Court.

Wherefore, the defendant would respectfully show that:

(a) This action should not have been brought in this Honorable Court because of the express prohibition in Art. 21.44 of the Insurance Code.

(b) The plaintiffs, at all times prior to the institution of this action and at the time of the institution of this action, had an adequate remedy at law; as provided in Art. 21.44.

(c) By transacting insurance business in this state, plaintiff Allstate Insurance Company and hence plaintiff Sears, Roebuck & Company consented to the very provisions of the Insurance Code which prohibit them from instituting or maintaining this action.

(d) The Board of Insurance Commissioners is an indispensable party to any action for the change of name of an insurance company.

Therefore, the defendant respectfully prays that this action be dismissed, or, in the alternative, for such other relief to which the defendant may be entitled.

PAUL CARRINGTON,
(Paul Carrington),
and
FRANK G. NEWMAN,
(Frank G. Newman),
Of CARRINGTON, GOWAN, JOHNSON, BROMBERG & LEEDS,
Attorneys for Defendant.

1900 Mercantile Bank Bldg.,
Dallas, Texas.

(Copy.)

EXHIBIT A.

Thompson, Knight, Wright & Simmons
Republic National Bank Bldg.
Dallas, Texas

October 31, 1955

Board of Insurance Commissioners of Texas
Austin, Texas

Gentlemen:

Our File 36-10

Re Allstate Insurance Company vs. All States Life Insurance Company.

On July 1, 1955, this Honorable Board granted a license to All States Life Insurance Company to do

14

PO 131

No. 521,917

THE UNITED STATES OF AMERICA

To All To Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that Allstate Insurance Company, of Chicago, Illinois, a corporation of Illinois,

did, on the 8th day of March, 1952, duly file in said Office an application for Registration of a certain SERVICE MARK shown in the Drawing for the SERVICES specified in the Statement, a copy of which Drawing and pertinent data from the Statement are hereby annexed and made a part hereof, and duly comply with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to Allstate Insurance Company, its successors or assigns.

This certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty first day of February in the year of our Lord one thousand nine hundred and fifty six and of the independence of the United States the one hundred and eightieth.

Robert C Watson
COMMISSIONER OF PATENTS

ATTEST:

ATTESTING OFFICER

EXHIBIT "AA"

18

No. 621,718

THE UNITED STATES OF AMERICA

To All To Whom These Presents Shall Come:

This is to certify that by the records of the United States Patent Office it appears that Allstate Insurance Company, of Chicago, Illinois, a corporation of Illinois,

did, on the 6th day of March, 1952, duly file in said Office an application for Registration of a certain SERVICE MARK shown in the Drawing for the SERVICES specified in the Statement, a copy of which Drawing and pertinent data from the Statement are hereby annexed and made a part hereof, and duly comply with the requirements of the law in such case made and provided, and with the regulations prescribed by the Commissioner of Patents.

And, upon due examination, it appearing that the said applicant is entitled to have said Mark registered under the Trade Mark Act of 1946, the said Mark has been duly registered this day in the United States Patent Office on the

PRINCIPAL REGISTER

to Allstate Insurance Company, its successors or assigns.

The certificate shall remain in force for Twenty Years unless sooner terminated as provided by law.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty first day of February in the year of our Lord one thousand nine hundred and fifty six and of the independence of the United States the one hundred and eightieth.

Robert C Watson
COMMISSIONER OF PATENTS.

ATTEST:

ATTESTING OFFICER

EXHIBIT "BB"

ALL STATES LIFE
INSURANCE COMPANY

MONTGOMERY, ALABAMA

EXA

POLICY NUMBER	AGE	DIVISION	POSITION	FACE AMOUNT $1,000.00

Hereby Insures the Life of

THE LIFE INSURED _____

(herein called the Insured)

And agrees to pay at its Home Office in Montgomery, Ala.

FACE AMOUNT

One Thousand Dollars

(herein called the face amount)

BENEFICIARY

to _____ beneficiary

(with the right of the Insured to change the beneficiary or assign this policy)

upon receipt of due proof of the death of the Insured or the Company will pay said Face Amount to the Insured as a mortuary benefit, or if living, on the _____ day of _____ 19____ (which is the end of the endowment term), provided premiums have been duly paid and this policy is then in force and is then surrendered properly released.

PREMIUM

This insurance is granted in consideration of the payment in advance of

_____ DOLLARS

and of the payment thereafter of a like sum upon each _____ day of _____

_____ until the end

of the endowment term, or the receipt of a mortuary benefit, or until the prior death of the Insured.

THE PROVISIONS of the subsequent pages hereof form a part of this contract as fully as if recited at length over the signatures hereto affixed.

IN WITNESS WHEREOF the ALL STATES LIFE INSURANCE COMPANY, Montgomery, Alabama, has caused this contract to be signed this _____ day of _____, 19____

_____ YEAR ENDOWMENT

Face Amount of Insurance Payable at End of _____ Years or Prior Death of Insured

PREMIUMS PAYABLE FOR _____ YEARS

NON-PARTICIPATING

Secretary

SAMPLE

President

Registrar

INSURANCE PAYABLE AT DEATH OR AS A MORTURY BENEFIT, OR AT MATURITY AS AN ENDOWMENT.
PREMIUMS PAYABLE TO MATURITY. THRIFT ENDOWMENT. NON-PARTICIPATING.

Form T.E.A.-1—5-47
Rev. 11-50

INCONTESTABILITY AND FREEDOM OF TRAVEL, RESIDENCE AND OCCUPATION.

This policy, except as to the provisions relating to Disability and Double Indemnity, if any, shall be (a) INCONTESTABLE after it has been in force during the lifetime of the Insured for a period of two years from its date of issue, provided premiums have been duly paid, and (b) FREE FROM RESTRICTIONS on travel, residence, occupation, except such as may have been endorsed on, or attached to, this policy at the time of its issue, or military or naval service.

PROVISIONS RELATING TO LOANS AND SURRENDER VALUES.

LOANS. After three full years' premiums have been paid, the Company, at any time, while this policy is in force, will advance to the Insured, on proper assignment and delivery of this policy, and on the sole security hereof, at 6% interest per annum in advance payable annually on the premium anniversary date a sum which, with interest for the then current policy year, shall not exceed the cash value as stated in the Table below. Interest if not paid when due shall be added to the existing loan and bear interest at the same rate. If the advance is for a purpose other than to pay premiums on policies in the Company, the granting of the same may be deferred by the Company for a period not exceeding ninety days after receipt of application therefor. Failure to repay such advance or to pay interest thereon shall not avoid this policy unless the total indebtedness hereon shall equal the total loan value, nor until thirty-one days after notice shall have been mailed to the Insured, and to the assignee of record, if any, to their addresses last known to the Company.

Such advance may be repaid at any time prior to default in the payment of any premium while the policy is in force.

OPTIONS OF SURRENDER OR LAPSE. Within sixty days (including the grace period) after default in the payment of any premium after three full years' premiums have been paid, the Insured may surrender this policy and elect one of the following Options:

(a) To receive the cash value of this policy; or

(b) To purchase non-participating paid-up Endowment insurance payable at the same time and on the same conditions as this policy; or

(c) To continue the insurance as non-participating paid-up extended term insurance for its face amount for the period shown in the Table opposite, but without the right to loans; and if the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in the policy the excess shall be used to purchase in the same manner a non-participating paid-up pure endowment payable at the end of the endowment term and on the same conditions as this policy, but without the right to loans.

If either option is chosen any indebtedness against this policy on or after the date of default shall not be repayable in cash, but the cash value shall be reduced by the amount of such indebtedness plus interest thereon, and the paid-up life insurance shall be for such amount as the reduced cash value will purchase, and the extended term insurance shall be for the face amount of this policy less such indebtedness and interest and for such period as the reduced cash value will purchase.

The granting of any cash value under this policy may be deferred by the Company for a period not exceeding ninety days after receipt of application therefor.

VALUES. Should the surrender of this Policy be at any other time than at the anniversary date hereof, the values for the preceding policy year shall be proportionately increased for that portion of the policy year for which premiums have been paid. The values shown in the above table are computed on the basis of the reserve as defined herein, assuming that premiums have been duly paid for the number of years stated and that there is no indebtedness hereon. Such values are equivalent to each other for the same year and to the reserve on said basis, less a surrender charge not exceeding at any time 2½% of the amount of insurance. After premiums have been paid for twenty full years or more there shall be no surrender charge. If the face amount is other than $1,000, the cash and paid-up endowment insurance values and the pure endowment amounts will be proportionate.

BASIS OF COMPUTATION. The Reserve for which funds are to be held upon this policy shall be computed upon the American Experience Table of Mortality with interest at 3½% in accordance with the preliminary term method of valuation. The first year's insurance hereunder is term insurance.

Table of Loan and Surrender Values

After policy has been in force YEARS	FOR EACH $1,000 OF FACE AMOUNT		Paid-Up Extended Term Insurance Irrespective of Face Amount		Paid-Up Pure Endowment and for each $1,000 Face Amount
	Cash Value	Paid-Up Endowment Insurance	Years	Days	

This loan value is the cash value less interest to the end of the policy year. The loan obtainable at the end of a given year may be secured during that year if the premium for the entire year has been paid. Due allowance will be made for any fractional premium paid beyond completed policy years.

These values will be reduced if there is any indebtedness.

Loan and surrender values for later years will be on the same basis and will be furnished on request.

AUTOMATIC NON-FORFEITURE PROVISION

After three full annual premiums have been duly paid on this policy, if any premium shall not be paid when due or within the grace period specified in this policy and the policy has not been surrendered as provided above, said premium shall be charged as an automatic policy loan with interest at the rate of 6 per cent per annum, payable annully in advance, as long as the then available cash value is sufficient to cover such loan. If the then cash value be not sufficient to cover such loan, such value shall be used to continue the insurance in force for a period which bears the same ratio to the full premium period then ensuing as such net value bears to the premium then due, and if prior to the expiration of such reduced period, the last due premium be not paid in full, all liability of the Company on this policy shall thereupon terminate. All indebtedness thus or otherwise created shall be a first charge against the policy ranking prior to the claim of any beneficiary or assignee or other claimant.

At any time while this policy is thus sustained, payment of premiums may be resumed without medical examination and the accumulated charges may be repaid to the Company or allowed to stand as a loan against the policy.

ASSIGNMENTS. No assignment of this policy shall be binding upon the Company or be deemed to be in force unless in writing and until filed at its Home Office. The Company assumes no responsibility for the validity of any assignment.

BENEFICIARY. If there is no written assignment of this policy in force and on file with the Company or if the only assignment in force and on file is to the Company as security for an advance, the Insured may from time to time, by a written request upon the Company's blank filed at its Home Office, change the beneficiary, but such change shall take effect only upon its endorsement on this policy by the Company.

The Insured (or assignee if any) may, without the consent of the beneficiary, surrender, assign or pledge this policy and all rights hereunder or, subject to the Company's approval, change to another form or plan of insurance. An assignment by the Insured shall operate to exclude any and all rights of any beneficiary under this policy except that upon release of all outstanding assignments or upon reassignment to the Insured all rights under this policy shall be the same as if such assignments of said policy had not been made and that if assigned or pledged as collateral only by the Insured any equity remaining at the death of the Insured shall accrue to the beneficiary.

PAYMENT OF PREMIUMS. This Policy is based upon the payment of premiums annually in advance, but premiums may be paid semi-annually or quarterly in advance according to the premium rates now in use by the Company. Change from one method of payment to another may be made on any anniversary date of this policy upon written request to the Home Office of the Company. In event of the death of the Insured, any unpaid installments of the annual premium for the current policy year will be deducted in settlement of the Policy.

All premiums hereunder are payable on or before the dates when due at the Home Office of the Company, or to a duly authorized agent in exchange for the Company's receipt signed by the President or Secretary and countersigned by such agent. This Policy shall not take effect unless nor until the first premium shall have been paid during the continued good health of the Insured.

This insurance is granted upon condition that all premiums will be paid promptly when due, and failure to pay any premium when due shall avoid this Policy and terminate all obligations of the Company hereunder except as elsewhere provided herein.

The first policy year under this policy shall begin on the Register date stated on the back of this policy and the second and subsequent policy years shall begin on the respective anniversaries of the Register date.

GRACE. A grace of thirty-one days will be granted for the payment of every premium after the first, during which period the insurance hereunder shall continue in force. No interest will be charged upon premiums paid during the days of grace. If death occur within the days of grace, the premium then due and unpaid shall be deducted from the amount payable hereunder.

LAPSE AND REINSTATEMENT. Failure to pay any premium on or before the day on which it falls due shall constitute a default hereunder. Upon default this policy shall lapse and the insurance herein cease, except as stated in the provisions hereof entitled "Grace" and "Options on Surrender or Lapse," but it may be reinstated at any time unless the cash value has been duly paid upon the production of evidence of insurability satisfactory to the Company and the payment of all overdue premiums, with interest at 6% per annum, and upon the payment with interest or the reinstatement of any indebtedness to the Company secured hereby.

AGE. If the age of the Insured has been misstated, any amount payable under any of the provisions of this policy, shall be the amount which the premium paid would have purchased at the Company's rates in use at the Register date hereof for the Insured's correct age.

THE CONTRACT. This policy, and the application therefor, a copy of which is endorsed hereon or securely attached hereto, constitute the entire contract between the parties. All statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this policy or be used in defense of a claim hereunder unless contained in the written application therefor and a copy of such application is endorsed hereon or attached hereto, when issued.

SELF-DESTRUCTION. Self-destruction sane or insane, within two years from the date of issue hereof, is a risk not assumed by the Company under this policy. In such an event the Company's liability shall be limited to an amount equal to the premium actually paid.

GENERAL PROVISIONS. (a) No condition, provision or privilege of this Policy can be waived or modified in any case except by an endorsement hereon signed by the President or Secretary of the Company. No agent has power on behalf of the Company to make or modify this contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise or by making or receiving any representation or information.

(b) All benefits under this Policy are payable at the Home Office of the Company.

(c) This Policy is issued at non-participating rates and, therefore, does not participate in any surplus of the Company.

CHANGE OF FORM. At any time while this policy is in full force, it may be exchanged, if properly surrendered to the Company, on any anniversary without medical examination for any other form of participating policy then written by the Company, having a higher premium rate and not involving any other life, provided the actual insurance liability of the Company shall not be increased thereby. The new policy will be issued as of the date of this policy. The difference between the reserves upon the respective policies or the difference between the premiums paid hereon and the premiums which would have been paid had the policy been issued on the new plan, with compound interest at the rate of 6 per cent per annum, whichever be the greater, shall be paid to the Company at the time of the exchange.

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PROSPECTUS

Public Offering to Residents of the State of Texas Only

COMMON STOCK

» Full Voting Rights «

No Bonds, Debentures, Preferred Stock nor Surplus Certificates have been authorized and all future Dividends will be applicable only to common stock.

ALL STATES LIFE

INSURANCE COMPANY

W. C. JENNINGS, PRESIDENT

MONTGOMERY, ALABAMA

B. F. BIGGERS
President

B. F. BIGGERS
President
Member of the Board of Directors

Mr. B. F. Biggers is one of the country's leading life insurance executives. Born in Hill County, Texas, Mr. Biggers entered the life insurance field in 1928. He organized the Republic Mutual Life Insurance Company of Dallas, which name was later changed to Republic National Life Insurance Company. Republic National Life is today one of the largest life insurance companies in the state of Texas.

In 1931 he organized the Republic Life Insurance Company of Oklahoma. This company was an outstanding success. It has an enviable record of consistently high dividends.

Mr. Biggers retired from active management in life insurance business in 1947 and has since devoted his time to investments in life insurance company stock. Mr. Biggers is one of the largest stockholders in the Lincoln National Life Insurance Company. Over 25 years of successful leadership in the life insurance industry makes him supremely qualified to lead a new life insurance company.

WILLIS BEAVERS

WILLIS BEAVERS
Member of the Board of Directors

Mr. Beavers has been associated with the banking business in Dallas for over 38 years. He served with the City National Bank until its merger with the First National Bank. He then served as assistant vice president of First National Bank for a number of years.

He has been president of the Merchants State Bank since organization.

Mr. Beavers has a wide reputation as a capable and conservative banker. His intimate knowledge of Texas business cycles and his splendid background in investments will enable him to render great service to All States Life Insurance Company.

COL. ALVIN MANSFIELD OWSLEY

COL. ALVIN MANSFIELD OWSLEY
Member of the Board of Directors

Col. Alvin M. Owsley is a business executive, lawyer, soldier, diplomat, radio and television commentator. He is former District Attorney, Denton County, Texas; Assistant Attorney General of Texas; United States Minister to Roumania, Irish Free State, and Kingdom of Denmark. He has served as National Commander of the American Legion. He is now a Director and Southwest representative of Ball Bros., Inc., and a Director of Byrd Oil Corp.

THRIFT ENDOWMENT POLICY

No._____

FACE AMOUNT $1,000.00

AGE_____

PREMIUM $_____

Register Date

Insurance payable at death or as a mortuary benefit, or at maturity as an endowment. Premiums payable to maturity. Thrift endowment. Non-Participating.

IT IS NOT NECESSARY TO EMPLOY ANY PERSON, FIRM, OR CORPORATION TO COLLECT THE INSURANCE OR SECURE ANY BENEFIT UNDER THIS POLICY. WRITE DIRECT TO THE ALL STATES LIFE INSURANCE COMPANY, MONTGOMERY, ALABAMA, OR COMMUNICATE WITH THE NEAREST AUTHORIZED AGENT OF THE COMPANY WHOSE DUTY IT IS TO FACILITATE ALL SETTLEMENTS WITHOUT CHARGE.

On the anniversary date of this Policy upon written request of the Insured premiums may be paid annually, semi-annually, or quarterly, as follows:

Annually	Semi-Annually	Quarterly	

CHANGE OF BENEFICIARY REGISTER

NOTE—ENTRIES IN THIS REGISTER ARE TO BE MADE ONLY BY THE COMPANY AT ITS HOME OFFICE IN MONTGOMERY, ALABAMA. NO OTHER ENTRIES WILL BE RECOGNIZED.

DATE ENDORSED	BENEFICIARY	ENDORSED BY

W. N. BLANTON

Member of the Board of Directors

Mr. Blanton served as vice-president and general manager of the Houston Chamber of Commerce from 1929-1951. He is a member of Houston Port Commission; Chairman of the Board of Allen Military Academy, Bryan, Texas. Mr. Blanton is President of Blanton Drilling Co. and is also a member of the Executive Committee Boy Scouts of America, Sam Houston area.

W. N. BLANTON

FRED KORTH

Member of the Board of Directors

Mr. Korth's training and ability has led him to many responsible positions in the federal government as well as in private industry. In 1951 he accepted an assignment with the Army in Washington and subsequently became Deputy Counselor of the Army. He then became Assistant Secretary of the Army and served in that capacity until 1953. Since leaving Washington Mr. Korth has been with the Continental National Bank of Fort Worth as Executive Vice President and a director of the firm.

FRED KORTH

WILLARD W. ROLLINS

Member of the Board of Directors

Mr. Rollins has long been associated with the Handy Andy Stores as an executive officer and a director. He is an officer and director of the Community Realty Company, Aggie Chemical Industries and Handy Andy Bakery. Mr. Rollins is also active in Boysville, and serves as Secretary and Director of that fine organization.

W. W. ROLLINS

WILLIAM O. STEVENS

Member of the Board of Directors

Mr. William O. Stevens was educated in the public schools of Post, Texas; Texas Military College, Terrell, Texas, and Southern Methodist University, Dallas, Texas.

He entered the banking business in 1926 with the First National Bank of Post, Texas. He was examiner for Federal Reserve Bank of Dallas, and later Vice President of Liberty State Bank.

For over 15 years Mr. Stevens has been associated with Republic National Bank of Dallas. He is Vice President and Member of Executive Committee of Republic National, and is in charge of Correspondent Banking Department.

Other business affiliations: Director and Member of Executive Committee of Harvest Queen Mill and Elevator Company, Plainview, Texas; and Vice President and Director of Muleshoe State Bank, Muleshoe, Texas.

WILLIAM O. STEVENS

OLD LINE LEGAL RESERVE

5630 DYER STREET, DALLAS, TEXAS

Price $5.25 Per Share

No Par Value

EXHIBIT "E"

These securities have been registered with the Board of Insurance Commissioners of The State of Texas. The registration of such securities does not constitute a recommendation or endorsement by the Board of Insurance Commissioners. No dealer, salesman, or other persons has been authorized to make any representations other than those contained in this prospectus, in connection with the offering contained herein, and information or representations not herein contained, if given or made, must not be relied upon as having been authorized. This prospectus does not constitute an offering or solicitation in respect to these securities to or of any person who is not a bona-fide resident of Texas. The price is not necessarily the market value or book value of the securities and neither the issuer nor any dealer or salesman is obligated to repurchase these securities.

business in the State of Texas, and since that time the said company has been selling its stock and carrying on other activities in that name. Great confusion has arisen between the name, "All States Life Insurance Company," and the name, "Allstate Insurance Company."

Long prior to the above date, Allstate Insurance Company was and still is engaged in the business of writing various forms of insurance in the State of Texas and throughout the United States. As counsel for Allstate Insurance Company, we hereby protest the action of the Board in granting a license to All States Life Insurance Company in that name, and hereby request the Board to require All States Life Insurance Company to change its name and select some other name which does not infringe upon and constitute unfair competition with Allstate Insurance Company, for the reasons, among others, the following:

1. The name, "All States Life Insurance Company" is so similar to the name, "Allstate Insurance Company," that it creates confusion in the mind of the public generally.

2. The use of the name, "All States Life Insurance Company," constitutes unfair competition with Allstate Insurance Company.

3. The use of the name, "All States Life Insurance Company," when considered in connection with the fact that for many years Allstate Insurance Company has been using said name, both in the State of Texas and throughout the United States, constitutes a fraud upon the public.

4. The use of the name, "All States Life Insurance Company," is in violation of the Lanham Act and especially Title 15, Section 1126, U.S.C.

5. All States Life Insurance Company has not only appropriated the name of Allstate Insurance Company, but has and is infringing the trade-mark, "Allstate."

6. All States Life Insurance Company is representing to the public that it is affiliated with and is a part of Allstate Insurance Company, and is seeking to capitalize on the good name and reputation of Allstate Insurance Company.

7. The name, "All States Life Insurance Company" violates not only the letter but the spirit of Article 2.02, which provides that the name selected by a life insurance company in this State "shall not be so similar to that of any other insurance company as to be likely to mislead the public."

Allstate Fire Insurance Company joins in this protest.

Will you please advise us the Board's action in this matter at your earliest convenience.

Yours truly,

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
By (S.) PINKNEY GRISSOM,
(Pinkney Grissom),
Attorneys for Allstate Insurance Company and Allstate Fire Insurance Company.

PG-M
c.c. All States Life Insurance Company
5630 Dyer Street
Dallas, Texas

(Copy)

EXHIBIT B

State of Texas
Board of Insurance Commissioners
Life Division
Austin

November 21, 1955

All States Life Insurance Company
5630 Dyer Street
Dallas 6, Texas
Attention: Mr. B. F. Biggers

Re: Allstate Insurance Company, Allstate Fire Insurance Company

Gentlemen:

We acknowledge receipt of your letter of November 16, protesting the use of the corporate names

identified in the caption, your protest being premised on an alleged violation of Article 2.02, Texas Insurance Code.

We respectfully advise that the Board does not contemplate action against the captioned companies, and we further advise that the Board has formally denied the relief sought by Mr. Pinkney Grissom in his letter of October 31.

If we can be of service at any time, do not hesitate to call on us.

Very truly yours,

GARLAND SMITH
Chairman, Board of Insurance
Commissioners

By S. PAUL D. CONNOR
Paul D. Connor
Legal Examiner

PDC:lew

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

Filed May 26, 1956

Tyler, Omohundro

The Court came on to be heard Defendant's Amended Motion to Dismiss for Failure to State a Claim and Failure to Join an Indispensable Party, came on to be heard, and the parties produced evidence in connection with said motion by stipulation, and the said motion, plaintiff's reply to said motion, as well as the trial brief in support of

said motion and the trial brief in opposition to said motion having been presented and considered.

It Is Ordered that said motion be and hereby is denied, to which defendant excepted.

Dated May 21, 1956.

WM. H. ATWELL,
United States District Judge.

Approved As To Form:
PINKNEY GRISSOM
Of THOMPSON, KNIGHT, WRIGHT & SIMMONS
Attorneys for Plaintiffs

FRANK G. NEWMAN
Of CAMPBELL, GOWAN, JOHNSON, BLOCHBERG & LEEDS
Attorneys for Defendant

FIRST AMENDED ANSWER

Filed May [illegible], 1956

To the Honorable Court:

Comes now defendant, and for answer to this Honorable Court, to the allegations asserted in its Amended Complaint, and without waiver thereof, files this its First Amended Answer and for answer to the Complaint and the First Amendment thereto

to (which added paragraphs X, XI and XII), admits, denies and avers as follows:

1. It admits that it is incorporated as a life insurance company under the laws of the State of Texas, as alleged in Paragraph I of the Complaint, and admits that plaintiff Allstate Insurance Company is incorporated as a casualty and fire insurance company under the laws of the State of Illinois, but says that it is without knowledge or information sufficient to form a belief as to the truth of the other allegations contained in said paragraph and accordingly leaves plaintiffs to their proof thereon.

2. It admits the allegations contained in the first sentence of Paragraph II of the Complaint but it is without knowledge or information sufficient to enable it to form a belief as to the truth of the other allegations contained therein and accordingly leaves plaintiffs to their proof thereon.

3. It does not have knowledge or information sufficient to enable it to form a belief as to the truth of the allegations contained in Paragraph III of said Complaint and accordingly leaves plaintiffs to their proof thereon.

4. It does not have knowledge or information sufficient to enable it to form a belief as to the truth of the allegations contained in Paragraph IV of said complaint and accordingly leaves plaintiffs to their proof thereon.

5. It denies that the pbulic has come to recognize the association of the word "Allstate" super-imposed over a map of the United States as indicating the

origin of goods and services exclusively provided by plaintiffs as alleged in Paragraph V of the complaint. It does not have knowledge or information sufficient to form a belief as to the truth of the other allegations in Paragraph V, of the complaint and accordingly leaves plaintiffs to their proof thereon.

6. It admits that defendant was incorporated as alleged in Paragraph VI of the complaint and that it has displayed on prospectuses and advertising material used in connection with the public offering of its stock the words "All States Life Insurance Company" super-imposed upon a map of the United States but it denies the other allegations contained in said paragraph and the conclusion alleged of the close similarity of the names of the two parties hereto and the creation of a confusion in the minds of the public. It further denies all further allegations both of fact and conclusion asserted in said paragraph and especially does it deny that plaintiffs have acquired the right to the exclusive use of such tradename, service mark or trademark as alleged, and denies also that there is any infringement or unfair competition. It says that plaintiffs are not engaged in the sale of life insurance but only casualty insurance whereas this defendant is not engaged in the sale of casualty insurance but only in the sale of life insurance.

7. It denies the allegations contained in Paragraph VIII of the complaint and especially denies that any act, fact or circumstance exists to warrant an accounting in any amount.

8. It denies the allegations contained in Paragraph IX of the complaint.

9. It does not have knowledge or information sufficient to enable it to form a belief as to the truth of the allegations contained in Paragraph X of the Amended Complaint and accordingly leaves plaintiffs to their proof thereon.

10. It denies the allegations contained in Paragraph XI of Plaintiffs' Amended Complaint.

11. It denies the allegations contained in Paragraph XII of Plaintiffs' Amended Complaint upon all the grounds and for all the purposes stated in Defendant's Amended Motion to Dismiss For Failure to State a Claim or Failure to Join an Indispensable Party, which motion is hereby incorporated herein by reference.

Defenses.

12. The defendant respectfully says that its name and trademark are not confusingly similar to the name and trademark of plaintiffs and that there is little or no likelihood of confusion in the minds of the public.

13. The defendant respectfully says that there is no competition between plaintiffs and the defendant. Plaintiff Sears, Roebuck & Company is engaged in the sale of goods, wares and merchandise through retail stores and by mail order. Plaintiff Allstate Insurance Company is engaged in the casualty and fire insurance business. The defendant is engaged in the life insurance business. Plaintiffs are prohibited by law from conducting a life insurance business and defendant is prohibited by law from conducting a casualty and fire insurance business.

14. The defendant respectfully shows that the words "all", "state" and "states" and all combinations of such words are public property and are not subject to appropriation by plaintiffs for the following reasons, to-wit:

a. The said words have been in common, public use in commerce in the United States by other for many years and long prior to the use of said words by plaintiffs.

b. The said words are geographical terms and therefore public property.

c. The said words, when used in connection with the sale of merchandise or services, are generic and obviously intended as descriptive of the availability of such merchandise and services, and of the territory to be covered.

The defendant would respectfully show that the maps of the United States, shown as Exhibits "A" and "B" in Plaintiffs' Original Complaint, are public property, geographical and in common use and not subject to appropriation.

15. The defendant respectfully shows that the term "allstate" has no secondary meaning and that hundreds of business enterprises throughout the United States are using the names "allstate", "all state", allstates", "all states", "all-state", and "all-states," as a part of their business name and, accordingly said words cannot have the distinctiveness claimed by plaintiffs.

16. In the alternative to the allegations made in Paragraphs 14 and 15, above, if this Honorable Court finds that the words 'all states and the map referred to as Exhibit "B" of Plaintiffs Original Complaint may be appropriated, then the defendant would respectfully show that said words and said map were first appropriated by an Alabama corporation, not a party to this suit, and that said Alabama corporation has assigned its rights in and to said words and map, throughout the State of Texas. The said Alabama corporation, the defendant's assignor, was incorporated under the laws of the State of Alabama on September 29, 1928, with a corporate name identical to the name of the defendant, to-wit: "All States Life Insurance Company" and was licensed by said State to transact life insurance business on January 2, 1929, and has been continually licensed by said State at all times since said date and is now licensed by said State. The said Alabama corporation was licensed to transact life insurance business by the State of Texas in 1937 and has, from time to time, been licensed to transact life insurance business by the States of Georgia, Mississippi, Tennessee, Kentucky, Ohio, Florida, Maryland and the District of Columbia. The said Alabama corporation was the first insurance company to use the name "All States" or any name similar thereto. It began the use of the trademark, copy of which is shown on a life insurance policy marked Exhibit "A" annexed, and on a letterhead marked Exhibit "B" annexed, in the year 1929, prior to the incorporation of plaintiff Allstate Insurance Company, and has continually used said trademark on its policies, letterheads and advertising from said date to the present date, and by virtue of its prior use has a prior right to said name and trademark than either

of the plaintiffs. The said Alabama corporation, All States Lif Insurance Company, has thousands of policyholders in said states where it has been licensed and is currently engaged in the life insurance business and the issuance of life insurance policies. Effective as of July 1, 1955, the date of incorporation of the defendant, the said Alabama corporation has executed and delivered to the defendant two assignments; one being an assignment of the right to use the name "All States Life Insurance Company" in the State of Texas and the other being an assignment of the right to use the trademark shown in Exhibits "A" and "B" within the State of Texas. Copies of these assignments are annexed, marked Exhibits "C" and "D". By virtue of said assignments the defendant has acquired all of the rights of the said Alabama corporation with in the State of Texas to the use of the aforementioned name and trademark and said rights are prior and superior to any rights of the plaintiffs with respect thereto and grant unto the defendant the exclusive right to use said name and trademark in the State of Texas.

17. The defendant further respectfully shows that its President executed a contract on or about April 6, 1956, with W. C. Jennings of Montgomery, Alabama, by the terms of which the said W. C. Jennings agreed to sell and the President of the defendant, B. F. Biggers, agreed to purchase a majority of the capital stock of the aforementioned Alabama corporation, and that said contract has been assigned by B. F. Biggers to the defendant by assignment dated May 24, 1956, and that the defendant is in the process, as of the date of this First Amended Answer, of performing the said contract and acquiring a majority

of the capital stock of the said Alabama corporation, which acquisition is expected to be completed shortly before or after June 12, 1956.

18. The defendant further respectfully shows that it has been chartered and licensed by the Board of Insurance Commissioners of the State of Texas to use its corporate name. Plaintiffs should not be permitted to collaterally attack such charter and license, but should be required to exhaust their remedies under the Texas Insurance Code, which is an adequate remedy at law; as stated in Defendant's Amended Motion to Dismiss.

19. Defendant would further respectfully show that it has acted in good faith and has never intended to compete unfairly with the plaintiffs or to pirate their good will. No name related to plaintiff Sears, Roebuck & Company has any commercial value in the life insurance industry; as said plaintiff is a retail chain store and mail order house. No name related to plaintiff Allstate Insurance Company has any commercial value in the life insurance industry; as said plaintiff is a fire and casualty company engaged in the sale of fire and casualty insurance by mail and through employee-agents stationed at Sears, Roebuck & Company stores and elsewhere and paid a commission for their services which, by percentage, is substantially less than that paid to the great number of independent fire and casualty insurance agents who produce business in accordance with the traditional American Agency System. The defendant is marketing life insurance in the traditional and customary manner for life insurance companies, through licensed life insurance agents who are independent

contractors; a plan of operation entirely different from said Allstate Insurance Company. No authorized officer, employee or agent of the defendant has ever represented that the defendant is in any way connected or affiliated with either of the plaintiffs. Substantially all of the advertising of plaintiff Allstate Insurance Company identifies that company with Sears, Roebuck & Company. The officers and directors of defendant are prominent and well-known Texas businessmen and their photographs, with a summary of their business experience, appears in the Prospectus by which defendant's stock has been sold. Copy of said Prospectus is annexed, marked Exhibit "E". The defendant's life insurance policies identify the company with the City of Dallas, Texas. Defendant has never intended to profit upon the good will of either of the plaintiffs and no reasonable, discerning person would associate defendant with either of the plaintiffs, under the circumstances. The name of the defendant was selected with a view toward the acquisition of the Alabama corporation, which defendant is in good faith endeavoring to accomplish.

20. Plaintiff Allstate Insurance Company was incorporated three years subsequent to the incorporation of the aforementioned Alabama corporation. All States Life Insurance Company, and Plaintiff Allstate Insurance Company obtained licenses in the States of Alabama and elsewhere subsequent to the obtaining of licenses in said states by the Alabama corporation. By their own actions, the plaintiffs admitted that the names "Allstate Insurance Company" and "All States Life Insurance Company" were not confusingly similar, and plaintiffs are, therefore, estopped from maintaining this action.

Wherefore, defendant respectfully prays that plaintiffs be denied the relief sought, that it go hence and recover its costs, and for such other relief which it may show itself entitled.

Dated June 6, 1956.

PAUL CARRINGTON,
and
FRANK G. NEWMAN,
Of CARRINGTON, GOWAN, JOHNSON, BROMBERG & LEEDS,
Attorneys for Defendant,
1900 Mercantile Bank Building,
Dallas 1, Texas.

EXHIBIT "C"

Assignment

Whereas, a corporation was organized under the laws of the State of Alabama in October 1928 with the name "All States Life Insurance Company" which corporation is hereinafter called "Assignor"

Whereas, Assignor began to transact life insurance and accident and health insurance business in the State of Alabama in January 1929

Whereas, Assignor has continuously used the name "All States Life Insurance Company" in connection with the transaction of life insurance and accident and health insurance business from January 1929 to the date hereof

Whereas, Assignor was licensed in the year 1937 by the State of Texas to transact life insurance business and accident and health insurance business in said State by the Board of Insurance Commissioners of the State of Texas.

Whereas, Assignor has been licensed by various States and the District of Columbia at various times heretofore to transact life insurance and accident and health insurance business and as of December 31, 1950, Assignor was duly licensed to transact said business in the States of Alabama, Georgia, Florida, Ohio, Kentucky, Tennessee, Indiana, Maryland, Virginia, and Pennsylvania, and in the District of Columbia,

presently licensed to transact

Alabama and is engaged

licenses were

All States Life

referred to

used said name in

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of said name since

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enjoined from

company

all the entire right, title and

All States Life

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used

duly organized and

the laws of the State of Texas on July

under the name All States Life Insurance

hereinafter called "Assignee"

Whereas, Assignee is duly licensed to transact life

business in the State of Texas, and is desirous of acquiring all

of the rights, titles and interests of Assignor in and

Now, Therefore, To All To Whom It May Concern:

Be It Known that for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations to it in hand paid, the receipt and sufficiency of which are hereby acknowledged and confessed, Assignor has sold, assigned and transferred and, by these premises does sell, assign, and transfer unto Assignee, its successors and assigns, forever, the entire right, title, and interest in and to the said name "All States Life Insurance Company" in the State of Texas, and any and all registrations thereof in the State of Texas, and any and all rights with respect to any insurance licenses in connection therewith in the State of Texas, together with the good will in connection with said name throughout the entire State of Texas.

Effective as of the 1st day of July, 1955.

ALL STATES LIFE INSURANCE COMPANY,
(an Alabama corporation),
By W. C. JENNINGS,
President.

The State of Florida,
County of Miami.

I, a Notary Public in and for said County and State hereby certify that W. C. Jennings, whose name as President of All States Life Insurance Company, an Alabama corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with

full authority, executed the same voluntarily for and as the act of said corporation.

Given Under My Hand and Seal of Office this 10th day of January, A. D. 1956.

NETTIE L. WHITE,
(Seal) Notary Public, State of Florida at large.

My commission expires March 3, 1957.

Bonded by American Surety Co. of N. Y.

EXHIBIT "D".

Assignment.

Whereas, a corporation was organized under the laws of the State of Alabama in October, 1928, with the name "All States Life Insurance Company" (which corporation is hereinafter called "Assignor");

Whereas, Assignor began to transact life insurance and accident and health insurance business in the State of Alabama in January, 1929;

Whereas, Assignor has continuously used the name "All States Life Insurance Company" in connection with the transaction of life insurance and accident and health insurance business from January, 1929 to the date hereof;

Whereas, Assignor was licensed in the year 1937 by the State of Texas to transact life insurance business

and accident and health insurance business in said State by the Board of Insurance Commissioners of the State of Texas;

Whereas, Assignor has been licensed by various States and the District of Columbia at various times heretofore to transact life insurance and accident and health insurance business, and as of December 31, 1950, Assignor was duly licensed to transact said business in the States of Alabama, Georgia, Florida, Ohio, Kentucky, Tennessee, Indiana, Maryland, Virginia, and Pennsylvania, and in the District of Columbia;

Whereas, Assignor is presently licensed to transact said business in the State of Alabama and is engaged in said business in said State;

Whereas, all of the aforementioned licenses were issued to Assignor in the name of "All States Life Insurance Company", and at all times referred to herein Assignor has continuously used said name in the conduct of its said business of life insurance and accident and health insurance, and there has been no cessation in the continuous use of said name since it was first adopted by Assignor at the time of its incorporation in October, 1928;

Whereas, Assignor has never been enjoined from using said name;

Whereas, Assignor is the first insurance company to use the said name and by virtue of its prior use thereof is the sole owner of the entire right, title, and interest, in and to the said name, "All States Life

Insurance Company", and the good will of the business in connection with which the said name is used;

Whereas, a corporation was duly organized and existing under the laws of the State of Texas on July 5, 1955, under the name "All States Life Insurance Company", hereinafter called "Assignee";

Whereas, effective as of July 1, 1955, Assignor sold, assigned, and transferred unto Assignee the entire right, title, and interest in and to the said name, "All States Life Insurance Company", in the State of Texas;

Whereas, from and after the time that it was first licensed to transact life insurance business in the State of Alabama in January 1929, Assignor has continuously used the service mark (a copy of which is annexed hereto and made a part hereof and marked Exhibit A) in connection with the transaction of life insurance and accident and health insurance business, and Assignor has continuously utilized said service mark in all of the states in which it has been licensed to transact business, and said service mark is upon insurance policies issued by Assignor, beginning with the first policy issued on May 20, 1929;

Whereas, Assignor has never been enjoined from using said service mark;

Whereas, Assignor is the first insurance company to use said service mark, and by virtue of its prior use thereof is the sole owner of the entire right, title, and interest in and to the said service mark and the

good will of the business in connection with which said service mark is used;

Now, Therefore, To All To Whom It May Concern:

Be It Known that for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable considerations to it in hand paid, the receipt and sufficiency of which are hereby acknowledged and confessed, Assignor has sold, assigned and transferred and by these premises does sell, assign, and transfer unto Assignee, its successors and assigns, forever, the entire right, title, and interest in and to the said service mark, and any and all registrations thereof in the State of Texas, and any and all rights with respect to any insurance licenses in connection therewith in the State of Texas, together with the good will in connection with said service mark throughout the entire State of Texas.

Effective as of the 1st day of July, 1955.

ALL STATES LIFE INSURANCE COMPANY,
(an Alabama corporation),
By W. C. JENNINGS,
President.

The State of Alabama,
County of Montgomery.

I, a Notary Public in and for said County and State hereby certify that W. C. Jennings, whose name as President of All States Life Insurance Company, an Alabama corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given Under My Hand and Seal of Office this 31 day of May, A. D. 1956.

OAKLEY MELTON, JR.,
Notary Public.

My commission expires Sept. 9, 1956.

Note:

Pages 58 - 60 are on card 2.

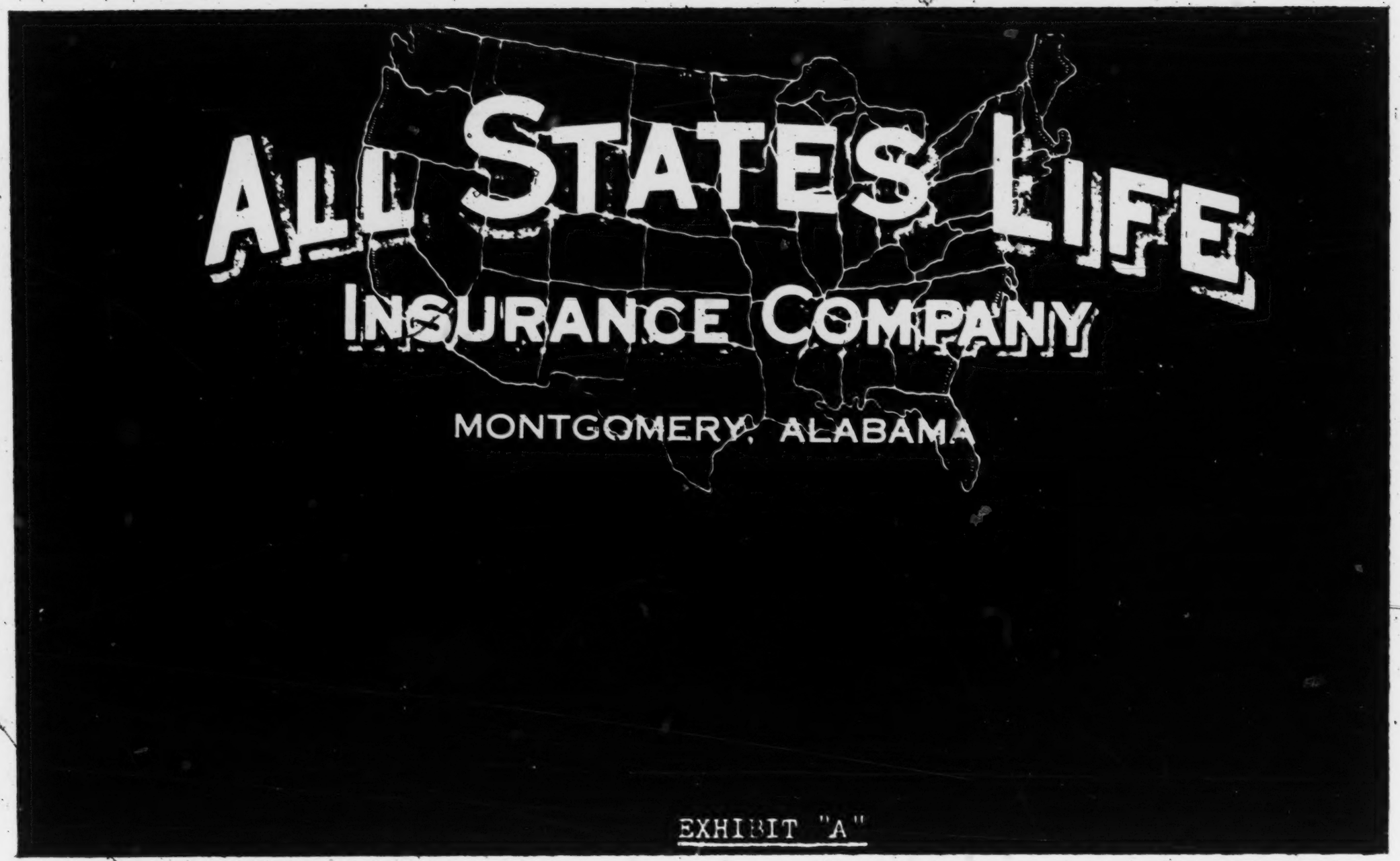

EXHIBIT "A"

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DOAK WALKER

Director of Agencies, Group Department

Mr. Walker's executive talent has won him positions on the Board of Directors of several large Texas corporations. His success in the world of business as well as in the world of sports has earned him the respect of top business executives all over the country.

His highly developed leadership ability and his many personal contact among the higher echelon of American Industry should enable him to be an outstanding leader in the Life Insurance business.

DOAK WALKER

ALL STATES LIFE INSURANCE COMPANY

DALLAS, TEXAS

BALANCE SHEET

December 31, 1955

ASSETS

Cash & Government Bonds	908,450.84
Municipal Bonds	257,500.00
Mortgage Loans	252,500.00
Appraised Value of Property Mortgaged to the Company is over $465,000.00.	
Insured Savings & Loan Shares	30,000.00
This entire amount is insured by Federal Savings & Loan Insurance Corporation, an instrumentality of the United States Government.	
*Subscriptions	1,085,837.77
*Equipment, Furniture, & Fixtures	1,519.61
Due & Accrued Interest	11,143.46
TOTAL ASSETS	$2,546,951.68

LIABILITIES

Capital Stock	250,000.00
Surplus	2,285,757.14
[illegible]	,535,757.14

him to be an outstanding leader in the Life Insurance business.

DOAK WALKER

ALL STATES LIFE INSURANCE COMPANY

DALLAS, TEXAS

BALANCE SHEET

December 31, 1955

ASSETS

Cash & Government Bonds	908,450.84
Municipal Bonds	257,500.00
Mortgage Loans	252,500.00
Appraised Value of Property Mortgaged to the Company is over $465,000.00.	
Insured Savings & Loan Shares	30,000.00
This entire amount is insured by Federal Savings & Loan Insurance Corporation, an instrumentality of the United States Government.	
*Subscriptions	1,085,837.77
*Equipment, Furniture, & Fixtures	1,519.61
Due & Accrued Interest	11,143.46
TOTAL ASSETS	$2,546,951.68

LIABILITIES

Capital Stock	250,000.00
#Surplus	2,285,757.14
#Capital & Surplus	2,535,757.14
Commissions	8,151.67
All Other Liabilities	3,042.87
TOTAL TO BALANCE ASSETS	$2,546,951.68

* Non-Admitted Assets

\# Includes Non-Admitted Assets

5. Does either of the plaintiffs know of any instance or instances in which securities issued by plaintiff Allstate Insurance Company have been confused with securities of the defendant by securities customers or purchasers?

6. If the answer to interrogatory No. 5 is in the affirmative, state where and when each and all instances of such confusion occurred and the names, addresses, and occupations of each and every person or persons confused.

7. Does either of the plaintiffs know of any instance or instances in which securities issued by defendant have been confused with securities of the plaintiff Allstate Insurance Company by securities customers or purchasers?

8. If the answer to interrogatory No. 7 is in the affirmative, state where and when each and all instances of such confusion occurred and the names, addresses and occupations of each and every person or persons confused.

9. Does either of the plaintiffs know of any corporation, partnership, or sole proprietorship now or heretofore transacting business within the United States of America, having any of the following names as all or any part of the name under which it conducts business: Allstate, Allstates, All-State, All-state, All-States, All State, All States, State, States, All.

10. If the answer to interrogatory No. 9 is in the affirmative, state the name, address and business conducted by each such corporation, partnership, or sole proprietorship.

11. If the answer to interrogatory No. 9 is in the affirmative, state whether either of the plaintiffs know of any instance or instances in which any product or service of either of the plaintiffs was confused with products or services of any of the corporations, partnerships, or sole proprietorships named in answer to interrogatory No. 10 by customers or purchases.

12. If the answer to interrogatory No. 9 is in the affirmative, state whether either of the plaintiffs has ever charged, notified, or otherwise communicated to any of the corporations, partnerships, or sole proprietorships named in answer to interrogatory No. 10 that the use of all or any of the names referred to in interrogatory No. 9 was improper, confusing, misleading, unfair, or unlawful.

13. If the answer to interrogatory No. 9 is in the affirmative, state whether either of the plaintiffs has ever obtained any Court order enjoining any party from using any such word as all or any part of the name under which it conducts business, giving the style and number of any such suit for any such injunction and the name of the Court in which such action was instituted.

14. If the answer to interrogatory No. 9 is in the affirmative, state whether either of the plaintiffs has ever unsuccessfully attempted to obtain a Court order enjoining any party from using any such word as all or any part of the name under which it conducts business, giving the style and number of any such suit for any such injunction and the name of the Court in which such action was instituted.

15. When did the plaintiffs first utilize the name "Allstate"?

16. When did the plaintiffs first utilize the name "Allstate" with respect to the issuance of insurance policies?

17. Does either of the plaintiffs issue policies of life insurance?

18. If the answer to interrogatory No. 17 is in the affirmative, state where and when each and all such policies of life insurance were issued and the names and addresses of each and every person or persons to whom they were issued.

19. Has either of the plaintiffs ever issued any policy of life insurance?

20. If the answer to interrogatory No. 19 is in the affirmative, state where and when each and all such policies of life insurance were issued and the names and addresses of each and every person or persons to whom they were issued.

21. Is either plaintiff licensed to transact any life insurance business in the State of Texas or elsewhere?

22. If the answer to interrogatory No. 21 is in the affirmative, state where and when each such instance of licensing occurred, giving the number and date of issuance of the license.

23. State whether a corporation exists with the name "Allstate Fire Insurance Company."

24. If the answer to interrogatory No. 23 is in the affirmative, state whether "Allstate Fire Insurance Company" is licensed to transact fire insurance business in the State of Texas.

25. If the answer to interrogatory No. 23 is in the affirmative, does either of the plaintiffs know of any instance of instances in which insurance policies issued by Allstate Fire Insurance Company have been confused with insurance policies of plaintiff Allstate Insurance Company by insurance customers or purchasers.

26. If the answer to interrogatory No. 25 is in the affirmative, state where and when each and all instances of such confusion occurred and the names, addresses, and occupations of each and every person or persons confused.

27. If the answer to interrogatory No. 23 is in the affirmative, does either of the plaintiffs know of any instance of instances in which policies of insurance issued by plaintiff Allstate Insurance Company have been confused with insurance policies of Allstate Fire Insurance Company by insurance customers or purchasers.

28. If the answer to interrogatory No. 27 is in the affirmative, state where and when each and all instances of such confusion occurred and the names, addresses, and occupations of each and every person or persons confused.

29. Does plaintiff Allstate Insurance Company have any license or agreement of any nature whatsoever,

by the terms of which it is permitted or authorized to use the name "Allstate?"

30. If the answer to interrogatory No. 29 is in the affirmative, state where and when each and all such licenses and agreements were executed and the names and addresses of all parties thereto.

31. Does either of the plaintiffs know of any party whomsoever who now utilizes or has heretofore utilized any symbol in any manner similar to the trademarks referred to in plaintiffs' complaint?

32. If the answer to interrogatory No. 31 is in the affirmative, state the names and addresses of all such parties.

33. If the answer to interrogatory No. 31 is in the affirmative, state whether either of the plaintiffs knows of any instance or instances in which the products or services with which such symbols have been used have been confused with any products or services of the plaintiffs by customers or purchasers.

34. If the answer to interrogatory No. 33 is in the affirmative, state where and when each and all such instances of confusion occurred and the names, addresses and occupations of each and all persons confused.

35. Is plaintiff Allstate Insurance Company licensed to transact insurance business in any State?

36. If the answer to interrogatory No. 35 is in the affirmative, state the name of every state where

plaintiff Allstate Insurance Company is licensed to transact business, the date such license was first issued by each such state, and give a description of the type of insurance plaintiff Allstate Insurance Company is permitted to transact by each such license.

37. Does either plaintiff known of any instance or instances in which securities issued by defendant have been represented to be securities of plaintiff Allstate Insurance Company?

38. If the answer to interrogatory No. 37 is in the affirmative, state where and when each such representation was made and the name and address of each party who made the same and the name and address of each party to whom each such representation was made.

Dated: April 11, 1956.

W. C. GOWAN,
(W. C. Gowan),
and
FRANK G. NEWMAN,
(Frank G. Newman),
Of CARRINGTON, GOWAN, JOHNSON, BROMBERG & LEEDS,
Attorneys for Defendant.

1900 Mercantile Bank Bldg.,
Dallas, Texas. #I-3171.

Service of two copies of the foregoing Defendant's Interrogatories to Plaintiffs acknowledged this 11th day of April, 1956.

PINKNEY GRISSOM,
Of THOMPSON, KNIGHT,
Wright & SIMMONS,
Attorneys for Plaintiffs.

Republic Bank Building,
Dallas, Texas.

ANSWERS TO INTERROGATORIES.

(Title Omitted.)

Plaintiffs, Sears, Roebuck & Company, and Allstate Insurance Company, by Pinkney Grissom, their attorney of record, answer the Interrogatories served upon them by Defendant on April 11, 1956, as follows:

Interrogatory No. 1: Answered: So far as either of the Plaintiffs know, the Defendant has never issued any contract or policy of insurance. Therefore there could not possibly be any confusion concerning insurance policies at this date.

Interrogatory No. 2: Answered: Not answered.

Interrogatory No. 3: Answered: So far as either of these Plaintiffs know, the Defendant has never issued any contract or policy of insurance to date; therefore there could not possibly be any confusion concerning policies up to this time.

Interrogatory No. 4: Answered: Not Answered.

Interrogatory No. 5: Answered: Since the time the Defendant was incorporated and up to the present time and during all of such period of time, the Plaintiff Allstate Insurance Company has not offered any securities for sale to the public. Also during this same period of time all of the securities of Allstate Insurance Company, except for qualifying shares of Directors and a few shares at one time owned by certain Officers of the Allstate Insurance Company, have been owned by the Plaintiffs Sears, Roebuck & Company since Allstate Insurance Company is a wholly-owned subsidiary of Sears, Roebuck & Company. However, due to the similarity in names, Plaintiffs know of many instances where purchasers or prospective purchasers of the securities of the Defendant thought that they were purchasing securities of the Plaintiff Allstate Insurance Company.

Interrogatory No. 6: Answered: Not answered.

Interrogatory No. 7: Answered: Neither of the Plaintiffs know of any instance or instances in which securities issued by Defendant have been confused with securities of the Plaintiff, Allstate Insurance Company, for the reason that, except for the stock of Allstate Insurance Company, all of which is owned by Sears, Roebuck & Company, except for qualifying shares of Directors, Plaintiff, Allstate Insurance Company, has no outstanding securities. However, Plaintiffs do know of instances in which purchasers or prospective purchasers of stock and other securities issued by Defendant have thought that stock was

issued by or in some way connected with Plaintiff, Allstate Insurance Company.

Interrogatory No. 8: Answered: Plaintiffs do not know each and every instance of confusion referred to in answer to Interrogatory No. 7. The following are some such instances which have come to the attention of Plaintiffs:

(a) On January 6, 1956, a Mr. J. S. Duron, 1301 Avenue K, Galveston, Texas, inquired of an agent of Allstate Insurance Company about stock of All States Life Insurance Company.

(b) J. E. "Squeaky" Young, 4815 Washington Avenue, Houston, Texas, sent a check, signed by Mrs. Elise Young, in the amount of $73.50 drawn on the Heights State Bank to Allstate Insurance Company, made payable to All States Insurance Company for purchase of stock in All States Life Insurance Company. Upon being contacted by agents of Allstate Insurance Company, Mr. Young stated that he thought that Sears was behind the company.

(c) A similar check in the amount of $18.33 was sent to the Houston office of Allstate Insurance Company by Mrs. J. M. Arington for purchase of stock in All States Life Insurance Company, said check being made payable to All States Insurance Company.

(d) Mr. John D. Ferguson, Allstate Insurance Company agent in Waxahachie Texas, during August and September of 1955 received approximately 40 telephone inquiries with reference to stock in All States Life Insurance Company and was informed by many

of his callers that they thought it was stock of Allstate Insurance Company. Among the persons so contacting Mr. Ferguson were Mr. W. H. Louis on August 10, 1955; Mr. Luther Eubanks who contacted Mr. Ferguson on September 5, 1955; and Mr. John Wooley who contacted Mr. Ferguson on September 12, 1955.

(e) By letter dated August 3, 1955, Mr. K. R. Slate, a stock broker with offices in the Burkburnett Building, Fort Worth, Texas, wrote to Allstate Insurance Company stating that he would like to know who to contact concerning the stock Allstate is selling at this time.

(f) On August 9, 1955, Allstate Insurance Company received a telephone call from the Wall Street Journal with reference to the stock which was being issued.

(g) On August 9, 1955, Allstate Insurance Company received a call from Jim Davis, a stock broker, with reference to the stock which was being issued.

(h) On September 16, 1955, Allstate Insurance Company received a call from a Mrs. Reid with reference to payment to be made on her stock in Allstate Life Insurance Company.

(i) The Allstate Insurance Company's office in Lubbock, Texas, received numerous calls, as well as personal contacts, by unidentified persons wishing to purchase stock in All States Life Insurance Company.

(j) The Allstate Insurance Company agent in Fort Worth, Texas, received at least two calls from unidentified insureds of Allstate Insurance Company who were considering purchasing stock in All States Life Insurance Company because they thought it was the same as Allstate Insurance Company.

Because of the nature of the contacts above referred to in many instances the identity of the party calling, his address or some other fact is not known.

Interrogatory No. 9: Answered: Yes.

Interrogatory No. 10: Answered: By the very nature of things, these Plaintiffs could not know whether they knew of all of the businesses which might be using any of the names referred to. These Plaintiffs can only answer with respect to such names as may have come to their attention. The following is a list of the names and addresses of a great many businesses using the name "Allstate" or a similar name which have come to the immediate attention of Plaintiffs. Plaintiffs' records do not reflect the type of business conducted by these businesses, though in many instances the name itself is explanatory:

Allstate Salvage Company
21821 S. Avalon
Tarronce, California

Allstate Motors
1482 Northwest 36th St.
Miami, Florida

Allstate Acceptance Corp.
Balboa Building
San Francisco 5, Calif.

Allstates Automobile Association
516 Insurance Building
Fort Worth, Texas

All-States Automobile Association, Inc.
975 Peachtree Street
Atlanta, Georgia

Allstate Credit Corporation
(Address unknown)
Attorneys:
Woodburn, Forman, Wedge,
Blakey & Thompson
First National Bank
206 North Virginia Street
Reno, Nevada

Allstate Motors
1901 W. Manchester
Los Angeles, California

All-State Club
1037 Menden Street
Anderson, Indiana

Allstate Attorneys Service
13542 Ventura Blvd.
Sherman Oaks, Calif.

Allstates Auto Title Service Co.
4500 Montrose Street
Houston, Texas

Allstate Bureau of Investigation
1569 Westwood Boulevard
Los Angeles, California

All State Credit Corp.
12 North Fifth Avenue
Room 101-102
Maywood, Illinois

Allstate Employment Agency
212 West Valley Boulevard
El Monte, California

Allstate Finance Company
Baytown, Texas

Allstate Finance
133 North Market Street
Wichita, Kansas

Allstate Motor Exchange, Inc.
2000 North Broadway
Wichita, Kansas

All-State Realty Company
10101 Mack Street
Detroit 14, Michigan

Allstate Van Service
4902 West Wisconsin Avenue
Milwaukee, Wisconsin

All State
30 West Washington
Chicago, Illinois

Allstate Brokerage Corp.
79 West Monroe Street
Chicago, Illinois

Allstate Credit Corporation
7851 Eastern Avenue
Silver Springs, Maryland

Allstate Finance Company
1422 Chestnut Street
Philadelphia, Pennsylvania

Allstate Brokers
(no address shown)

Allstate Motor Club, Inc.
912 West Capital Street
Jackson, Mississippi

Allstate Realty Sales
625 North 28th Street
Milwaukee, Wisconsin

All-State Realty Company
Suite 309
First Federal Building
Fort Lauderdale, Florida

Allstate Motors, Inc.
2613-17 S. State St.
Chicago 16, Ill.

All States Manufacturing Co.
1806 S. Wabash Ave.
Chicago, Ill.

All State School of Driving
Philadelphia, Pa.

Allstate Finance Corporation
One South Pinckney Street
Madison, Wisconsin

Allstate Finance Company
201 West 6th Street
Topeka, Kansas

Allstate Realty Company
2239 West Fond du Lac Avenue
Milwaukee, Wisconsin

Allstates Securities and Investment Corp.
810 Tyler
Amarillo, Texas

Allstate Heating Co., Inc.
(Address unknown)

Allstate Auto Body Works
1 Oxford Avenue
Jersey City, New Jersey

Allstate Car Company
1701 North Cicero
Chicago, Illinois

Allstate Finance Company
408 East 70th Street
Cedar Grove, Louisiana

Allstate Insurance Agency, Inc.
500 Baronne Street
New Orleans, Louisiana

Alstate Motor Club
1014 East Cass Street
Tampa, Florida

Allstate Mutual Insurance Agency
238 South Court Street
Opelousas, Louisiana

All-State Realty Company
23 South West 40th Ave.
Fort Lauderdale, Fla.

All State Realty Company
Bend, Oregon

Allstate Service Station
Tampa, Florida

All States Auto Body Works
700—4th St., South
St. Petersburg, Fla.

All-States Tire Replacement Corp.
Akron, Ohio

All State Trucking Center
Orlando, Florida

Allstates Amoco
Frederick Pike
Gaithersburg, Md.

Allstates Auto Delivery, Inc.
1947 Broadway
New York 23, N. Y.

All State Auto Parks
3819 Navigation
Houston, Texas

All States Garage
2106 Fifteenth Avenue
Tampa, Florida

All States Limousine Service
3232 Glendora Ave.
Cincinnati 20, Ohio

Allstate Motors
5537 S. State St.
Chicago, Ill.

Allstate Finance Co.
Indianapolis, Ind.

All State Service Station
Tallahassee, Florida

All State Service Station
5802 Queens Blvd.
Boro of Queens
Woodside, N. Y.

All State Trailer & Finance Co.
1520 S. Central St.
Glendale, California

All State Glass Co.
Chicago, Illinois

All States Finance Corp.
Cincinnati, Ohio

All State Discount, Inc.
6501 Sunset Blvd.
Hollywood, California

All States Finance Corporation
Main at Eighth
Cincinnati 2, Ohio

All States Auto Body Builders, Inc.
2121-23 W. Lake St.
Chicago, Illinois

All States Auto Parts
1917-23 Broadway
Gary, Indiana

All State Driving School
12509 Long Beach Blvd.
Lynwood, California

All State Garage
Atwood Avenue
West Haven, Conn.

All State Motor Co.
232 S. Court St.
Montgomery 4, Alabama

Allstate Service, Inc.
1305 Republican, Rm. 20
Seattle 2, Washington

All State Bonding Agency
Newark, N. J.

All States Service Station
1702—8th Ave.
Tampa, Florida

All States Trailer Park
1254 East Main Street
El Cajon, California

All States Sales Corp.
936 N. Michigan Ave.
Chicago, Ill.

All State Auto Finance Company
105 W. Monroe St.
Chicago, Ill.

All State Fire Extinguisher Service
Chicago, Ill.

All State Lumber Co. Inc.
Cicero, Illinois

All State Garage
6052 S. State St.
Chicago, Ill.

Plaintiffs do not believe that the above list is in any sense a complete list or comprehensive list of the

corporations, partnerships or sole proprietorships in the United States using the word "Allstate" or any similar word for business purposes. The above list constitutes those which have come to the immediate and direct attention of the Plaintiffs. In respect o the above list, the Plaintiffs, or either one or the other of them, have taken in every instance a po itive step to protect its rights in the use of the name "Allstate" and "Allstate Insurance Company" under the law of the United States and of the respective states, except where Plaintiffs did not regard the infringement in the particular instance as being worth the effort and expense in taking appropriate legal action.

Interrogatory No. 11: Answered: Yes.

Interrogatory No. 12: Answered: Yes.

Interrogatory No. 13: Answered: Yes, Allstate Insurance Company vs. Allstate Insurance Agency, Inc., Civil Action 5611, United States District Court for the Eastern District of Louisiana at New Orleans; Sears, Roebuck & Company vs. Johnson dba Allstate School of Driving, 121 Federal Supplement 955, Eastern District of Pennsylvania, 1954, reversed in 219 Federal 2d 590, Third Circuit, 1955; Sears, Roebuck & Company, et al., vs. Joseph Dziezanowski dba Allstate Auto Body Works, Civil Action 430-55, United States District Court for the District of New Jersey; Sears, Roebuck & Company et al., vs. Allstate Brokerage Corporation et al., Civil Action 54-C-1307, United States District Court for the Northern District of Illinois, Eastern Division, and probably others, and Consent Decrees in many cases. Also many using the name

"Allstate" have voluntarily agreed to discontinue its use in view of the prior rights of the Plaintiffs.

Interrogatory No. 14: Answered: No.

Interrogatory No. 15: Answered: Sears, Roebuck & Company first used the name "Allstate" in 1926 and Allstate Insurance Company first used the name in 1931.

Interrogatory No. 16: Answered: 1931.

Interrogatory No. 17: Answered: Not at this time.

Interrogatory No. 18: Answered: Not answered.

Interrogatory No. 19: Answered: Sears, Roebuck & Company has never issued a policy of life insurance itself, but it did own all of the stock of Hercules Life Insurance Company between February 12, 1934 and June 30, 1938 and during that time insurance policies were issued. The company was sold by Sears, Roebuck & Company and all of its records transferred to the purchaser. Allstate Insurance Company has never issued a policy of life insurance.

Interrogatory No. 20: Answered: The answer to Interrogatory No. 19 above should suffice. As stated there, Sears, Roebuck & Company sold Hercules Life Insurance Company, together with all of its records, and has no records of the policies of life insurance issued during the time it owned the said company.

Interrogatory No. 21: Answered: Not at this time.

Interrogatory No. 22: Answered: Not answered.

Interrogatory No. 23: Answered: Yes.

Interrogatory No. 24: Answered: No.

Interrogatory No. 25: Answered: Allstate Fire Insurance Company is a wholly-owned subsidiary of the Allstate Insurance Company and there would be no occasion for any confusion between the two.

Interrogatory No. 26: Answered: Not Answered.

Interrogatory No. 27: Answered: Allstate Fire Insurance Company is a wholly-owned subsidiary of Allstate Insurance Company and there would be no occasion for any confusion between the two.

Interrogatory No. 28: Answered: Not Answered.

Interrogatory No. 29: Answered: Yes.

Interrogatory No. 30: Answered: Allstate Insurance Company is a wholly-owned subsidiary of Sears, Roebuck & Company Allstate Fire Insurance Company is a wholly-owned subsidiary of Allstate Insurance Company and therefore will have the right to use all of the patents and trademark rights of Sears, Roebuck & Company. Allstate Insurance Company, in its own right, has acquired certain rights and registrations under the Federal laws; that these registrations held by Sears, Roebuck & Company and Allstate Insurance Company have been listed in the Original Complaint and its amendments on file herein, and particularly the registrations of the name "Allstate" and the name

of Sears, Roebuck & Company shown in the Exhibits attached to said pleadings, as well as the registrations of the name "Allstate" and its insignia by Allstate Insurance Company, also attached as Exhibits to the pleadings of Plaintiffs herein, reference to which is here made.

Interrogatory No. 31: Answered: These Plaintffs know of no one who is now using, or has used in the past, the service mark of Plaintiff Allstate Insurance Company consisting of the word "Allstate" superimposed over a map of the United States, except the Defendant in this lawsuit.

Interrogatory No. 32: Answered: Allstate Insurance Company, Skokie, Illinois; Allstate Fire Insurance Company, Skokie, Illinois; All States Life Insurance Company, Dallas, Texas.

Interrogatory No. 33: Answered: Yes.

Interrogatory No. 34: Answered: Plaintiffs do not know each and every instance of the confusion referred to in answer to Interrogatory No. 33. The following are some such instances which have come to the attention of Plaintiffs:

(a) On January 6, 1956, a Mr. J. S. Duron, 1301 Avenue K, Galveston, Texas, inquired of an agent of Allstate Insurance Company about stock of All States Life Insurance Company.

(b) J. E. "Squeaky" Young, 4815 Washington Avenue, Houston, Texas, sent a check, signed by Mrs. Elise Young, in the amount of $73.50 drawn on the

Heights State Bank to Allstate Insurance Company, made payable to All States Insurance Company for purchase of stock in All States Life Insurance Company. Upon being contacted by agents of Allstate Insurance Company, Mr. Young stated that he thought that Sears was behind the company.

(c) A similar check in the amount of $18.33 was sent to the Houston office of Allstate Insurance Company by Mrs. J. M. Arington for purchase of stock in All States Life Insurance Company, said check being made payable to All States Insurance Company.

(d) Mr. John D. Ferguson, Allstate Insurance Company agent in Waxahachie, Texas, during August and September of 1955 received approximately 40 telephone inquiries with reference to stock in All States Life Insurance Company and was informed by many of his callers that they thought it was stock of Allstate Insurance Company. Among the persons so contacting Mr. Ferguson were Mr. W. H. Louis on August 10, 1955; Mr. Luther Eubanks who contacted Mr. Ferguson on September 5, 1955; and Mr. John Wooley who contacted Mr. Ferguson on September 12, 1955.

(e) By letter dated August 3, 1955, Mr. K. R. Slate, a stock broker with offices in the Burkburnett Building, Fort Worth, Texas, wrote to Allstate Insurance Company stating "that he would like to know who to contact concerning the stock Allstate is selling at this time.";

(f) On August 9, 1955, Allstate Insurance Company received a telephone call from the Wall Street Journal with reference to the stock which was being issued;

(g) On August 9, 1955, Allstate Insurance Company received a call from Jim Davis, a stock broker, with reference to the stock which was being issued;

(h) On September 16, 1955, Allstate Insurance Company received a call from a Mrs. Reid with reference to payment to be made on her stock in Allstate Life Insurance Company.

(i) The Allstate Insurance Company's office in Lubbock, Texas, received numerous calls, as well as personal contacts, by unidentified persons wishing to purchase stock in All States Life Insurance Company;

(j) The Allstate Insurance Company agent in Fort Worth, Texas, received at least two calls from unidentified insureds of Allstate Insurance Company who were considering purchasing stock in All States Life Insurance Company because they thought it was the same as Allstate Insurance Company.

Because of the nature of the contacts above referred to in many instances the identity of the party calling, his address or some other fact is not known.

Interrogatory No. 35: Answered: Yes.

Interrogatory No. 36: Answered: Following is a list of the States in which the Plaintiff, Allstate Insurance Company, is licensed to transact business, the date such license was first issued by each such State, and the types of insurance Allstate Insurance Company is permitted to transact by each such license:

Alabama—10/13/38

Miscellaneous Casualty Excluding Official Surety Bonds Fire and Allied Lines.

Arizona—9/14/38

Property; Marine and Transportation; Vehicle; Casualty.

Arkansas—4/2/35

Fire and Allied Lines; Disability; Liability and other Casualty Lines excluding Workmen's Compensation and Fidelity and Surety.

California—10/23/31

Authorized to transact within this State, insurance of the following classes, as defined in Chapter 1, Part 1, Division 1 of the Insurance Code of the State of California: Fire, Marine, Disability, Plate Glass, Liability, Common Carrier, Liability, Boiler and Machinery, Burglary, Credit, Sprinkler, Team and Vehicle, Automobile, and Miscellaneous.

Colorado—9/18/34

Licensed to transact business as a Multiple Line Insurance Company.

Connecticut—12/27/35

1. Fire and Allied Lines.

2. Accident and Health.

• • • • • • • •

4. Bodily Injury Liability (Other than Auto).

5. Auto Bodily Injury Liability.

6. Auto Property Damage.

7. Auto Collision.

8. Auto Fire, Theft and Comprehensive.

9. Property Damage (Other than Auto).

11. Glass.

12. Burglary and Theft.

13. Boiler and Machinery.

14. Sprinkler Leakage and Water Damage.

15. Credit.

Delaware—3/24/32

Fire and Allied Lines of All Classes; Casualty excluding Fidelity, Surety and Workmen's Compensation.

Dist. of Columbia—4/21/32

Fire, Extended coverage, Tornado, windstorm, cyclone, hail (except growing crops), Sprinkler and water damage, Explosion, riot, civil commotion, Earthquake, Hail, Ocean Marine, Inland Marine, Aircraft physical damage, Accident, Health, Liability other than auto, Auto liability, Auto property damage, Auto physical damage, Property damage other

than auto, Glass, Burglary and theft, Boiler and machinery, Credit, Elevator.

Florida—2/1/39

Automobile Bodily Injury and Property Damage; Automobile Physical Damage and Collision; General Liability.

Georgia—2/29/32

Miscellaneous Casualty and Fire and Allied Lines of Insurance, but excluding Fidelity & Surety Bonds and Workmen's Compensation Insurance.

Idaho—4/1/47

Class 1—Fire.

Class 2—Marine.

Class 4—Accident & Health.

Class 6—Liability.

Class 7—Glass.

Class 8—Boiler & Machinery.

Class 9—Burglary & Robbery.

Class 10—Sprinkler.

Class 12—Vehicle.

Illinois—4/15/31

Clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), of Class 2 and (a), (b), (c), (d), (e), (f), (g),

(h), of Class 3 of Section 4 of the "Illinois Insurance Code."

Indiana—7/24/34

Class 2 (a) (b) (c) (d) (e) (f) (g) (h) (i) and 1 of Section 3501 of Title 39 of the Laws of the State of Indiana. Class 3 (a) (c) and (d).

Iowa—11/20/34

Authorized Multiple Lines Sections 515.48-.49, code of Iowa.

Kansas—8/30/34

Automobile Physical Damage; Accident & Health; Automobile Liability; General Liability; Hospitalization.

Kentucky—10/3/46

Insurance as defined in KRS 304.342 (Disability); 304.347 (Vehicle); 304.348 (casualty) Paragraphs 1, 3, 4, 5, 6, 7, 9; 304.344 (Property).

Louisiana—11/14/38

Automobile (Full Coverage), General Liability, Burglary & Theft, Glass, Boiler & Machinery, Accident & Health, Fire & Extended Coverage, Vandalism, Earthquake.

Maine—6/11/32

Multiple Line Insurance in accordance with the provisions of Chapter 84 of the Public Laws of 1949, with the exception of surety insurance which must be written under a separate license.

Maryland—5/3/32

Fire; Extended Coverage; Tornado, Wind, Cyclone, Hail (except crops); Sprinkler and Water Damage; Explosion, Riot and Civil Comm.; Earthquake; Hail (growing crops only); Ocean Marine; Inland Marine; Aircraft, physical damage; Accident; Health; Liability, other than auto; Auto Liability; Auto Property Damage; Auto Physical Damage; Property Damage other than auto; Glass; Burglary and Theft; Boiler and Machinery; Personal Property Floater; Livestock; Use and Occupancy, other than fire or tornado; Forgery; Larceny; Robbery; Fraud; and Elevator.

Massachusetts—11/8/51

Fire, Marine (except Ocean Marine), Machinery, Steam Boiler (private residence only), Liability including Motor Vehicle, Glass, Sprinkler Leakage, Water Damage, Aircraft and Elevator Property Damage, Burglary, Robbery and Theft insurance in accordance with the provisions of its charter and the first (1st), second (2nd) except ocean marine, fifth (5th), sixth (6th), seventh (7th), eighth (8th), Ninth (9th) and twelfth (12th) clauses of Section 47 of Chapter 175, General Laws, and amendments thereto. (State of Mass., per their letter of 4/9/56, has given us authority to add Clause Thirteenth (13th)Livestock upon renewal of our license which date is 7/1/56).

Michigan—8/1/34

Subsections Second, Third, Fourth, Fifth, Sixth, Seventh, Tenth, Eleventh, Twelfth, Aircraft, Motor Vehicle Elevator, Automobile Occupant Accident Coverage and Medical Payment Coverage, as provided

in Subsection Thirteenth, of Section 2, of Chapter I, Part Three; and Insurance, as provided in Subsections First, Second, Third, and Fourth, of Section 1, of Chapter I, Part Four; provided a paid-up capital of not less than one million dollars or a minimum capital and surplus of one million dollars is maintained by said Company, in accordance with the provisions of "The Insurance Code."

Minnesota—9/15/34

Insurance as specified in M.S.A. Section 60.29, Subdivision 1, Clauses 1, 2, 3, 5a, 8, 9 ,12, 13.

Mississippi—6/9/48

Full Coverage Automobile and all lines of insurance warranted by company charter.

Missouri—8/7/31

Accident and Health; Automobile Full Coverage; Boiler, Steam; Burglary & Theft; Employers Liability; Fire & Allied Lines; Liability, Property Damage and Collision other than Automobile; Livestock—Animal Collision only; Plate Glass Insurance. In accordance with Section 375.010, R.S. Mo., 1953, Supplement.

Montana—4/1/34

Paragraphs 1-2-3-4-5 of Section 40-1409, Revised Codes of Montana, 1947.

Nebraska—6/28/32

Transact the business of Insurance in the State of Nebraska as described by sub-section(s) 1, 3, 5, 6, 7, 8, 9, 12 and 14 Section 44-201 of the Statutes of Nebraska.

Nevada—6/29/48

Class II and III Casualty, Fidelity, Surety, Fire, Marine etc.

New Hampshire—8/6/37

Fire and Allied Lines, Casualty Insurance as authorized by Chapter 401, Section 1, paragraphs I, II, IV, V & VI of the New Hampshire Revised Statutes Annotated, and the company's charter.

New Jersey—3/5/32

Insurance in accordance with the provisions of its charter and as specified in Paragraphs a, b, d, e, f, j, k and l and o of Section 17:17-1 of the "Revised Statutes" and amendments thereto except that such company is limited under paragraph "o" to loss or damage to property of others caused by an insured.

New Mexico—7/9/47

Multiple Line business (Class 2, Casualty, Fidelity and Surety, Class 3, Fire and Marine, Class 5, General Vehicle, as provided by Section 58-18-25 New Mexico Statutes 1953 Annotated, as Amended.)

New York—3/26/36

Accident and health, fire, miscellaneous property, water damage, burglary and theft, glass, boiler and machinery, collision, personal injury liability, property damage liability, workmen's compensation and employer's liability, credit, motor vehicle and aircraft and marine insurance (excluding ocean marine insurance and insurance against loss or damage and against liability for loss or damage by reason of injury to the person), as specified in paragraphs 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 17, 19 and 20 of Section 46 of the New York Insurance Law, to the extent

permitted by certified copy of its Amended Charter filed in this Department.

North Carolina—11/9/38

Section 58-72, Classes 3a, b, 4, 5a, 6a, b, 7, 8, 9, 10, 11 12a, b, 13a, b, 14a, b, 19a, b, c, d, e, 20a b & 22.

North Dakota—6/4/32

Accident and Health, Automobile, Personal Injury and property damage, General Liability (Other than Auto), Burglary and Forgery, Glass, Steam Boiler, Elevator, Machinery, Sprinkler Leakage, Credit, Property Damage (Other than Auto), Fire, Extended Coverage, Additional Extended Coverage, Vandalism, Earthquake, Inland Marine.

Ohio—5/2/32

Insurance as prescribed in Section 3941.02, Divisions (A), (B), (C), (D), (E), and (G), of the Revised Code of Ohio, excepting fidelity and surety insurance.

Oklahoma—8/24/37

Insurance as provided in Sub-Divisions 1, 2, 4, 5, 6, 9, 10, 11, 12, 13, 36 O.S. 1951, Section 6.

Pennsylvania—4/29/35

Insurance as mentioned in Section 202 subdivision (b), paragraphs (1), (2), (3); subdivision (c), paragraphs (2), (3), (4) excluding Workmen's Compensation, (5), (6), (7), (8), (9), (11), (13) of the Act of May 17, 1921, P.L. 682;

Oregon—8/10/35

Fire, Marine, Casualty, and Disability Insurance.

Rhode Island—1/10/39

Vehicle, accident and health, liability, burglary and forgery, glass, miscellaneous, contingent losses, fire and allied lines.

South Carolina—5/28/32

Accident and Health, Fire, and Casualty Insurance.

South Dakota—5/1/32

Fire and allied lines.
Bodily Injury Liability (other than auto).
Property Damage (other than auto).
Auto Bodily Injury.
Auto Physical Damage.
Auto Property Damage.

Tennessee—8/1/32

Automobile Fire, Theft, Comprehensive and Collision; Automobile Property Damage and Bodily Injury; General Liability; Glass, Burglary, Robbery and Theft; Fire, Extended Coverage and Dwelling Broad Form.

Texas—7/1/36

Accident and Health; Automobile—Public Liability, Property Damage, Collision, Fire, Theft, Comprehensive, Towing, Emergency Service Expenses; Burglary; Glass; Steam Boiler; Elevator; Machinery; Sprinkler; General Liability; Credit; Property Damage other than Auto; Fire; Lightning; Extended Coverage; Additional Extended Coverage; Vandalism; Earthquake; Inland Marine in accordance with the provisions of Chapters 6 and 8, the Insurance Code.

Utah—12/1/31

All types of insurance except life and title.

Vermont—1/6/36

Transact in this State the different kinds of Insurance Business Authorized by its Charter, by lawfully Constituted and Licensed Resident Agents only, in accordance with the Laws of Vermont.

Virginia—9/30/38

—accident, health, fire, extended coverage, tornado, windstorm, cyclone, hail (except growing crops), sprinkler leakage and water damage (commerical), explosion, riot, civil commotion, earthquake, aircraft physical damage, liability other than auto, auto liability, auto property damage, auto physical damage, property damage other than auto, and collapse of building—

Washington—9/27/34

General Casualty Insurance, as defined in Section 11.07 of the Insurance Code. Property Insurance, as defined in Section .11.04 of the Insurance Code. Disability Insurance, as defined in Section .11.03 of the Insurance Code. Marine & Transportation Insurance, as defined in Section .11.05 of the Insurance Code. Surety Insurance, as defined in Section .11.08 of the Insurance Code.

West Virginia—9/22/38

Chapter 33, Articles 4, 6, 11 & 13; and Chapter 31, Article 5 of the 1931 Code of West Virginia as amended.

Wisconsin—9/17/36

(1) Fire, (2) Marine, (4) Disability, (5) Liability, (6) Steam Boiler, (9) Credit, (10) Burglary, (11) Plate Glass, (12) Sprinkler Leakage, (13) Elevator, (14)

Live Stock, (15) Automobile, (17) Other Casualty, and (18) Medical Payments Insurance.

Wyoming—11/10/37

Multiple Lines.

Interrogatory No. 37: Answered: Yes.

Interrogatory No. 38: Answered: Plaintiffs do not know each and every instance of the representations referred to in answer to Interrogatory 37. The following are some such instances which have come to the attention of Plaintiffs;

(a) A Mr. Grant Mock, 6205 Avenue L, Galveston, Texas was told by a representative of All States Life Insurance Company that that company was the same as the Sears company.

(b) Mr. Jim Moeller of Houston, Texas approached an employee of Sears, Roebuck & Company in a Sears store in Houston and stated that Allstate Insurance Company had given All States Life Insurance Company the go-ahead to use the Allstate name.

(c) A Mr. Threadgill of Dallas was approached by some agent of the All States Life Insurance Company and made representations concerning the affiliation of Sears, Roebuck & Company and All States Life Insurance Company.

Supplemental Answers to Interrogatory No. 8:

(k) Mr. B. D. Walker, 4016 Washington Avenue, Houston, Texas, when contacted by the agent of All

States Life Insurance Company, thought the stock was stock of a Sears, Roebuck & Company subsidiary.

(l) Mr. Grant Mock, 6205 Avenue L, Galveston, Texas, when first approached, thought that he was talking about stock in Allstate Insurance Company.

(m) The Corpus Christi Office of Allstate Insurance Company received a telephone call from a policyholder in Allstate Insurance Company, whose identity has not yet been ascertained, indicating that said policyholder was incensed about being solicited for the purchase of Allstate Insurance Company stock and was thinking seriously of canceling her insurance in Allstate Insurance Company because of such solicitation.

(n) The manager of the Service Office of Allstate Insurance Company located in Corpus Christi was told by a lawyer of Corpus Christi, whose identity has not been ascertained, that said lawyer had purchased stock in Allstate Insurance Company.

(o) Mr. Paul Nye, an attorney in Corpus Christi, Texas, with offices in the Jones Building in that city, spent approximately 15-20 minutes talking with an agent of All States Life Insurance Company about the stock of that company, all the while being under the impression that he was talking about stock of Allstate Insurance Company.

(p) Dr. W. H. Drain, 302 Denver, San Antonio, Texas, being an insured of Allstate Insurance Company, purchased stock of All States Life Insurance Company, under the impression that he was purchasing stock in Allstates Insurance Company.

(q) I. R. Adams, 138 Gerald Avenue, San Antonio, Texas, in answering a newspaper advertisement of All States Life Insurance Company, wrote a letter inquiring if that company was connected with Sears, Roebuck and Company.

(r) Mrs. Edwards, LAkeside-4549, Dallas, Texas, called the office of Allstate Insurance Company on October 6, 1955, and stated that she wanted to buy stock of All States Life Insurance Company.

(s) On February 24, 1956, Mr. McCarty of the Republic National Bank of Dallas called the office of Allstate Insurance Company to ascertain who was the transfer agent of All States Life Insurance Company stock.

(t) Joseph Hornell, an employee at Chance-Vought, on February 18, 1956 informed Mr. Mulky of the Allstate Insurance Company that he (Mr. Hornell) was purchasing stock in Allstate Insurance Company.

(u) Mr. James M. Jacques of First Southwest Company, Mercantile National Bank Building, Dallas, Texas, a stock broker, has informed Plaintiffs that he has received numerous inquiries confusing stock of All States Life Insurance Company with stock of Allstate Insurance Company.

(v) A Mr. Wilson of 1441 Keeler Drive, Irving, Texas, has stated that at the time he purchased stock in All States Life Insurance Company, he was under the impression that that company was a part of the Sears, Roebuck & Company organization.

(w) Mrs. Joan Parker of Portland, Texas states that while she was employed by All States Life Insurance Company as a telephone solicitor, she talked to at least one prospective purchaser of stock in All States Life Insurance Company who inquired as to whether it was connected with Sears, Roebuck & Company.

Supplemental Answers to Interrogatory No. 34:

(k) Mr. R. D. Walker, 4016 Washington Avenue, Houston, Texas, when contacted by the agent of All States Life Insurance Company, thought the stock was stock of a Sears, Roebuck & Company subsidiary.

(l) Mr. Grant Mock, 6205 Avenue L, Galveston, Texas, when first approached, thought that he was talking about stock in Allstate Insurance Company.

(m) The Corpus Christi Office of Allstate Insurance Company received a telephone call from a policyholder in Allstate Insurance Company, whose identity has not yet been ascertained, indicating that said policyholder was incensed about being solicited for the purchase of Allstate Insurance Company stock and was thinking seriously of canceling her insurance in Allstate Insurance Company because of such solicitation.

(n) The manager of the Service Office of Allstate Insurance Company located in Corpus Christi was told by a lawyer of Corpus Christi, whose identity has not yet been ascertained, that said lawyer had purchased stock in Allstate Insurance Company.

(o) Mr. Paul Nye, an attorney in Corpus Christi, Texas, with offices in the Jones Building in that city, spent approximately 15-20 minutes talking with an agent of All States Life Insurance Company about the stock of that company, all the while being under the impression that he was talking about stock of Allstate Insurance Company.

(p) Dr. W. H. Drain, 302 Denver, San Antonio, Texas, being an insured of Allstate Insurance Company purchased stock of All States Life Insurance Company, under the impression that he was purchasing stock in Allstates Insurance Company.

(q) I. R. Adams, 138 Gerald Avenue, San Antonio, Texas, in answering a newspaper advertisement of All States Life Insurance Company, wrote a letter inquiring if that company was connected with Sears, Roebuck and Company.

(r) Mrs. Edwards, LAkeside-4549, Dallas, Texas, called the office of Allstate Insurance Company on October 6, 1955, and stated that she wanted to buy stock of All States Life Insurance Company.

(s) On February 24, 1956, Mr. McCarty of the Republic National Bank of Dallas called the office of Allstate Insurance Company to ascertain who was the transfer agent of All States Life Insurance Company stock.

(t) Joseph Hornell, an employee at Chance-Vought, on February 18, 1956 informed Mr. Mulky of the Allstate Insurance Company that he (Mr. Hornell) was purchasing stock in Allstate Insurance Company.

(u) Mr. James M. Jacques of First Southwest Company, Mercantile National Bank Building, Dallas, Texas, a stock broker, has informed Plaintiffs that he has received numerous inquiries confusing stock of All States Life Insurance Company with stock of Allstate Insurance Company.

(v) A Mr. Wilson of 1441 Keeler Drive, Irving, Texas, has stated that at the time he purchased stock in All States Life Insurance Company, he was under the impression that that company was a part of the Sears, Roebuck & Company organization.

(w) Mrs. Joan Parker of Portland, Texas states that while she was employed by All States Life Insurance Company as a telephone solicitor, she talked to at least one prospective purchaser of stock in All States Life Insurance Company who inquired as to whether it was connected with Sears, Roebuck & Company.

Supplemental Answers to Interrogatory No. 38:

(d) Joseph Hornell, an employee of Chance-Vought, Dallas, Texas, has stated that at the time he purchased, or considered purchasing, stock in All States Life Insurance Company, said stock was represented to him as being in Allstate Insurance Company.

(e) John E. Roland, Utica, New York, states that at the time he was solicited with reference to purchasing stock in All States Life Insurance Company he was led to believe that All States Life Insurance Company was connected with Sears, Roebuck & Company.

SEARS, ROEBUCK & COMPANY,
Plaintiff,
By G. D. DOWNEY,
Its Chief Editor.
ALLSTATE INSURANCE COMPANY,
Plaintiff,
By C. B. KENNEY,
Its Senior Vice President.
THOMPSON, KNIGHT, WRIGHT & SIMMONS,
By PINKNEY GRISSOM,
(Pinkney Grissom),
Attorneys for Plaintiffs.
2300 Republic Bank Bldg.,
Dallas 1, Texas.

State of Illinois,
County of Cook.

The undersigned G. D. Downey, on oath, states that he is Chief Editor of Sears, Roebuck & Company, that he is duly authorized and qualified to make this affidavit; that he has read the answers set out above to Defendant's Interrogatories propounded to Plaintiffs under Federal Rule 33; and that the answers and the facts therein stated are, within his knowledge, true and correct.

G. D. DOWNEY.

Given Under My Hand and Seal of Office this the 7th day of May, 1956.

ELSIE F. JOHNSON,
(Elsie F. Johnson),
(Seal) Notary Public in and for Cook County, Illinois.

My Commission Expires Oct. 9, 1957.

State of Illinois,
County of Cook.

The undersigned C. B. Kenney, on oath, states that he is Senior Vice President of Allstate Insurance Company, that he is duly authorized and qualified to make this affidavit; that he has read the answers as set out above to Defendant's Interrogatories propounded to Plaintiffs under Federal Rule 33; and that the answers and the facts therein stated are, within his knowledge, true and correct.

C. B. KENNEY.

Given Under My Hand and Seal of Office this the 7th day of May, 1956.

ELSIE F. JOHNSON,
(Elsie F. Johnson),
Notary Public in and for
Cook County, Illinois.

(Seal)

My Commission Expires Oct. 9, 1957.

In the District Court of the United States for the Northern District of Texas, Dallas Division.

Sears, Roebuck & Company, a Corporation, et al.,
vs. No. 6318-Civil.
All States Life Insurance Company, a Corporation.

Be It Remembered that on the 12th day of June, 1956, before the Honorable William H. Atwell, United States District Judge, the following proceedings were had in the above styled and numbered cause:

Appearances.

Thompson, Knight, Wright & Simmons, Dallas, Texas, By Mr. Pinkney Grissom, and Mr. David M. Kendall, Jr., Appearing for the Plaintiffs.

Carrington, Gowan, Johnson, Bromberg & Leeds, Dallas, Texas, By Mr. Paul Carrington, and Mr. Frank G. Newman, Appearing for the Defendant.

Proceedings.

The Court:

Now, ladies and gentlemen—don't sit down yet—the Court puts into force what is called the Rule. That means you must retire from the Courtroom, and hold yourselves in readiness out there to come in and testify when the Marshall calls you; but while you are out there, don't talk among yourselves about what your testimony has been or what it will be. If the lawyers, either of them, wish to speak with you, you may do that, of course; but do that only in the pres-

ence of an officer of the Court, but not otherwise. You can pass out, now, please, outside there.

Now, Mr. Grissom, bear in mind that the Rule is in force.

Mr. Grissom:
Yes.

The Court:
I don't want any witnesses to be in here when you question.

Mr. Grissom:
Yes, I understand.

The Court:
Now, who do you want in for the Plaintiff?

Mr. Grissom:
I want Mr. R. L. Tayloe for Sears, Roebuck & Company, and Clarence Kenny for—

Mr. Newman:
If it please the Court, we would like Mr. B. F. Biggers, President of the Defendant company.

The Court:
All right. I think we don't need to make any statement about the case. I have gone over your briefs pretty carefully, and I am somewhat surprised that you gentlemen haven't agreed on your facts; because you seem to agree on your facts in your briefs; and, of course, it is your case, and you gentlemen and your clients will have to pay the costs, and we have to pay the Reporters, and clerks, and witnesses, and

things of that sort. I think I can recite the facts for you, and see if we can agree on those as the facts.

The Plaintiff pleads that Sears, Roebuck was the father, we will call it, of Allstate Insurance Company, which was and is, I think, up to the present time a casualty—accident and casualty insurance for the benefit of its employees. Of course, outsiders could also come in as insured in that Allstate Insurance Company; that that had been in practice, and that had been in operation here in Texas, for a number of years; that a year or so ago, the insurance Commissioner of Texas, acting upon application made by the defendant, granted the name—granted the right to engage in the life insurance business to the All States Insurance Company, and after that, the defendant also purchased from the All States Insurance Company of Alabama its stock and its assignments of its assets and so forth, and its name for use in Texas as its insurance company, and that is the insurance company now that the defendant is using in addition to the All States name granted to it for use in Texas.

The controversy that arises is that the Plaintiff thinks that it has a trademark right to the use of the word "Allstate Insurance Company", which is so much like the All States Insurance Company that a confusion would result in the mind of the purchaser of the insurance policy.

I find that the facts and from the briefs, briefs of the parties, that this purchase of the Alabama All States Company by the Defendant was after the institution of this suit. Now, that is what I gathered, gentlemen. Isn't that about the issue here?

Mr. Grissom:

Well, if Your Honor please—

The Court:

I don't want to cut you off any of your rights. If you want to take a week or two and put witnesses on, of course, it is my business to sit here and hear you.

Mr. Grissom:

Well, if Your Honor please, I think we should offer testimony as briefly as we may, and we have boiled it down by some stipulations that will help some. We have some other testimony. I think we can put on our case within an hour and a half, anyway.

The Court:

Well—

Mr. Grissom:

And we would like to do that. We would like to do that.

The Court:

It is your case, gentlemen.

Mr. Grissom:

We would like to do that.

The Court:

All right. Call your first witness.

Mr. Grissom:

All right. First, we would like to offer some instruments from The Board of Insurance Commissioners. We would like to offer, and these are offered, certified copies under a stipulation that we might use them. A letter from—

The Court:

What is it you are doing, now, Mr. Grissom?

Mr. Grissom:

I want to prove how the name "All States" was obtained contrary to the opinion of the Attorney General's office of Texas.

The Court:

Well, I don't care anything about the opinion of the Attorney General's office in Texas; it has no business in the record.

Mr. Grissom:

Well, I would like to offer it for the record.

The Court:

Well, you can offer it, and I can refuse to admit it.

Mr. Grissom:

All right. I offer a letter from Charles D. Dunne, dated June 23, 1955, from Louisville, Kentucky. It is to the Hon. Larry Blanchard, Chief Examiner of the Texas Insurance Department at Austin, Texas, and I ask that it be marked properly as an exhibit.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 1 for identification.)

The Court:

Anything else?

Mr. Grissom:

I offer the Reservation of Name for New Company for the Insurance Department as Plaintiffs' Exhibit No. 2.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 2 for identification.)

Mr. Grissom:

I offer a letter dated June 29, 1955, from Mr. Blanchard to Mr. Dunne of the Insurance Department and ask that it be marked as Plaintiffs' Exhibit 3.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 3 for identification.)

The Court:

I don't know what you are doing, Mr. Grissom. You are not putting anything in as an Exhibit on me unless I know what it is. You will have to read your Exhibits.

Mr. Grissom:

All right.

The Court:

First, hand them to the other side. Now, you are an old practitioner, and let's practice law now.

Mr. Grissom:

I realize that, and we have agreed these may be used.

The Court:

How is that?

Mr. Grissom:

We have stipulated that these may be used in evidence, and I want to offer them for the record.

We have a written stipulation under which all of these may be offered.

The Court:
Well, I don't know what is in them. I have to know what is in them.

Mr. Grissom:
Well, all right. Plaintiffs' Exhibit 1 is a letter from Mr. Charles D. Dunne, from Dunne's International Insurance Reports, in Louisville, addressed to Mr. Blanchard, Chief Examiner—

The Court:
Suppose you let one of your other lawyers read for you. I don't understand you.

Mr. Grissom:
All right. I will have Mr. Kendall read it, then.

The Court:
Yes.

Mr. Kendall:
"My Dear Mr. Blanchard:

Confirming our telephone conversation of this morning, I would respectfully ask to make application for the name of "All-States Life Insurance Company" to be used on a new company that is proposed to be organized by a group of Dallas people. Should this name be available and not presently used by any life insurance company licensed within the State of Texas, we would like very much to have it reserved

for us. We would be very grateful if you can check this for us as soon as conveniently possible.

Cordially yours,

PETE DUNNE,

(Charles D. Dunne),

typed in."

The Court:
All right.

Mr. Grissom:
Plaintiffs' Exhibit 2.

The Court:
Is that the letter that I said a while ago that I wasn't going to hear?

Mr. Grissom:
That is right.

The Court:
Well, I have heard it, now, and it is admitted.

Mr. Grissom:
All right.

The Court:
All right.

Mr. Kendall:
The Plaintiffs' Exhibit 2, Reservation of Name for New Company, dated June 23, 1955.

Name: All-States Life Insurance Company.

Comments: Submitted today by telephone (letter will follow) for Mr. Charles Dunne, 901 Fort Worth Avenue, Dallas, Texas.

Approved: Signed L. W. Blanchard, Chief Examiner; signed Paul D. Connor, Legal Examiner; signed C. B. Murrah, Mutual Assessment.

Licensed: Allstate Insurance Company (stock casualty) Skokie, Ill.

Allstate Fire Insurance Co. (stock fire) Skokie, Ill.

Best's Checked: O. K.

Temp. File Checked: O. K."

Mr. Grissom:
We offer a letter dated June 29, 1955, from Gerland A. Smith—

The Court:
I told you to let him read it to me. I told you to let him read it.

Mr. Grissom:
I was trying to identify it.

The Court:
What is that, Plaintiffs' Exhibit No. 4?

Mr. Grissom:
Number 3.

Mr. Kendall:

Plaintiffs' Exhibit No. 3: a letter dated June 29, 1955. "Honorable John Ben Sheppard, Attorney General of Texas, Capitol Station, Austin 11, Texas. Re: All States Life Insurance Company. Dear Sir: We enclose herewith original articles of incorporation of the captioned company, together with supporting documents and our check list. If you find the enclosed documents in proper form, please favor us with your usual certificate.

Very truly yours,
GARLAND A. SMITH,
Chairman Board of Insurance Commissioners,
By L. W. BLANCHARD,
Chief Examiner and Chief Clerk."

Mr. Grissom:

I offer another letter dated June 29, from the Attorney General to the Commission, and ask that it be marked Exhibit—

Mr. Kendall:

4.

Mr. Grissom:

—4.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 4 for identification.)

Mr. Kendall:

A letter to the Hon. Garland A. Smith, Chairman, Board of Insurance Commissioners, International Life

Building, Austin, Texas, dated June 29, 1955. "Attention: Mr. Paul Connor, Legal Examiner. Re: All States Life Insurance Company. Gentlemen: I have examined the original articles of incorporation and supporting documents of the above named company and am withholding approval of same for the following reasons:

1. The name of the proposed insurance company is so similar to that of another insurance company as to be likely to mislead the public, as required by Art. 2.02.

2. There does not appear to be an affidavit stating that the money paid for the shares of stock is the bona fide, unconditional and unencumbered property of the company, as required by Art. 2.05.

3. There does not appear to be an affidavit from the depository bank that the funds on deposit are the bona fide, unconditional, and unencumbered property of the company insofar as the bank is concerned, which affidavit must be sworn to by an officer of said bank.

We are returning herewith the proposed articles of incorporation and other supporting documents of the above company and upon correction of these enumerated defects, we shall be glad to re-examine the papers.

Very truly yours,
ROBERT O. FAGG,
Assistant Attorney General."

Mr. Grissom:

I offer a letter dated July 1, 1955, from Mr. Smith to the Attorney General, marked Exhibit 5.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 5 for identification.)

Mr. Kendall:

Plaintiffs' Exhibit 5: A letter dated July 1, 1955. "To the Hon. John Ben Sheppard, Attorney General of Texas, Capitol Station, Austin 11, Texas.

Re: All States Life Insurance Company.

Dear Sir: We are enclosing herewith original articles of incorporation of the captioned company, together with supporting documents. These articles were previously forwarded to you under date of June 29, with our check list, and were returned with letter of transmittal dated June 29, 1955, setting forth reasons for disapproval.

Affidavits respecting the money paid for stock have now been added to the supporting documents, and the file is resubmitted for your consideration.

If you find the enclosed documents in proper form, please favor us with your usual certificate.

Very truly yours,
GARLAND A. SMITH,
Chairman, Board of Insurance Commissioners,
By PAUL D. CONNOR,
Legal Examiner."

Mr. Grissom:

Now, we offer—

Mr. Kendall:

We offer Plaintiffs' Exhibit—

The Court:
That is Exhibit 6.

Mr. Kendall:
—No. 6, Your Honor.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 6 for identification.)

Mr. Kendall:
Plaintiffs' Exhibit No. 6 is a letter dated July 1, 1955. Re: All States Life Insurance Company. Addressed to the Hon. Garland A. Smith, Chairman, Board of Insurance Commissioners, International Life Building, Austin, Texas.

"Attention: Mr. Paul D. Connor, Legal Examiner. Dear Sir: We have examined the original articles of incorporation of the above captioned company and approve same as to form.

Enclosed is our certificates with the other instruments.

Yours very truly,
ROBERT O. FAGG,
Assistant Attorney General."

Mr. Grissom:
We offer a certified copy of the charter of the All States Life Insurance Company, the Defendant in this case, and ask that it be marked as Plaintiffs' Exhibit 7.

The Court:
Mr. Grissom, I don't like to keep crossing my fingers; but unfortunately I can't hear you; that is an impediment that I should not, and wish I did not.

have to call attention to; but I can't understand you. If you will just let one of your associates read these matters for you, then we would get along better.

Mr. Kendall:
We offer for evidence as Plaintiffs' Exhibit 7 a certified copy of the articles of incorporation of All States Life Insurance Company, Dallas, Texas.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 7 for identification.)

Mr. Kendall:
We offer into evidence Plaintiffs' Exhibit 8, a stipulation between the parties—

(The instrument referred to was here marked Plaintiffs' Exhibit No. 8 for identification.)

Mr. Kendall:
—with reference to the introduction of certain testimony, and Your Honor, this is a stipulation that certain exhibits attached to it are valid or accurate reproductions of registrations by the Plaintiffs of their trade mark, some of which have expired and have been replaced by others, and some of which are currently good. Does Your Honor wish me to read the stipulation?

The Court:
Well, I don't think that it is necessary to read it.

Mr. Kendall:
Yes, sir.

The Court:
You have stated it.

Mr. Kendall:
Mark it.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 9 for identification.)

Mr. Kendall:
We offer into evidence Plaintiffs' Exhibit 9, which is a certified copy from the Department of Insurance of the State of Alabama of the annual statement of All States Life Insurance Company, Montgomery, Alabama. Does the Court wish me to read any of this? This is the annual report filed for the year of 1950 showing the condition of the Alabama corporation, at the end of that year.

The Court:
All right.

Mr. Kendall:
Please mark this as Plaintiffs' No. 10.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 10 for identification.)

Mr. Kendall:
Plaintiffs offer into evidence Plaintiffs' Exhibit 10, which is a certified copy of the annual statement of All States Life Insurance Company, Montgomery, Alabama, for the year ended December 31, 1951.

The Court:
Fifty what?

Mr. Kendall:

'51, Your Honor. Mark this.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 11 for identification.)

Mr. Kendall:

We offer into evidence Plaintiffs' Exhibit 11, which is a certified copy of the annual statement of All States Life Insurance Company, Montgomery, Alabama, for the year ended December 31, 1952.

Please mark this.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 12 for identification.)

Mr. Kendall:

We offer into evidence Plaintiffs' Exhibit 12, which is the annual statement—a certified copy of the annual statement of All States Life Insurance Company of Montgomery, Alabama, for the year ended December 31, 1953.

Please mark this as Plaintiffs' 13.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 13 for identification.)

Mr. Kendall:

We offer into evidence Plaintiffs' Exhibit 13, which is a certified copy of the annual statement of All States Life Insurance Company, Montgomery, Alabama, for the year ended December 31, 1954.

Mark this.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 14 for identification.)

Mr. Kendall:

We offer into evidence Plaintiffs' Exhibit 14 which is a certified copy of the annual statement of All States Life Insurance Company of Montgomery, Alabama, for the year ended December 31, 1955.

Please mark this as Plaintiffs' Exhibit 15.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 15 for identification.)

Mr. Grissom:

Mark this 16 while you are at it.

Mr. Kendall:

This is Plaintiffs' 15. It is entitled an agreement "This agreement made and entered into this ..... date—" the date is not filled in—"by and between All States Life Insurance Company, a corporation duly organized under the laws of the State of Alabama, with its home office at 2323 South Court Street, Montgomery, Alabama, hereinafter referred to as All States, and United Insurance Company, a corporation duly organized under the laws of the State of Illinois, with its home office at 1313 South Michigan Avenue, Chicago 5, Illinois, hereinafter referred to as United.

Witnesseth:

Whereas, All States desires to reinsure all of its insurance policies, business and risks, wherever located, with United; and

Whereas, United desires to assume and reinsure all of the said insurance policies, business and risks of All States and to secure the releases of All States from all liability thereunder.

Now, Therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the mutual covenants and agreements herein contained and the mutual benefits to be received by the respective parties hereto, All States and United covenant and agree with each other as follows:

1. All States hereby sells, assigns, cedes to and reinsures with United all of its insurance policies, business and risks outstanding on the effective date of this agreement, together with all policy reserve liabilities connected therewith, of every kind, nature and description whatsoever and wheresoever they may be situated, and all good will, rights and remedies of All States therein, including, by way of enumeration and not of limitation, the right to collect and receive from the holders of all said policies issued, assumed or reinsured by All States, all payments on account of premiums, notes, loans and interest which may then or thereafter be or become due by virtue of any contract of insurance, or otherwise, or annuity entered into, assumed or reinsured by All States on or prior to the effective date hereof; and All States shall therewith convey to United all books, documents, papers, records, files, instruments and everything in any way whatsoever pertaining thereto.

2. All States shall, coincident with the assumption by United of all liability hereunder, assign and deliver

to United acceptable assets in amounts equal to the sum or sums of the following liabilities connected with the said policies, business and risks herewith agreed to be assigned:

(a) Policy reserve liabilities connected with the said policies herewith agreed to be conveyed, which policy reserve liabilities shall consist of all the policy reserve liabilities as required by said policy contracts, computed in accordance with the laws of the State of Alabama and the Alabama Insurance Department's rules and regulations for such reserve requirements.

(b) Reserves sufficient to pay all claims pending and incurred as of the effective date hereof on the same basis as heretofore established and approved by the Insurance Department of the State of Alabama in filing the annual report of said All States, including, by way of enumeration and not of limitation, those upon which notices have not been received but which were incurred on or before the effective date hereof.

(c) Premiums paid in advance.

(d) Cash bonds of agents in the service of All States and commissions and bonuses unqualifiedly due agents, superintendents or managers as of the effective date hereof.

(e) All other liabilities upon said business reinsured and/or against the said assets transferred to United.

3. All States shall, as of the effective date hereof, convey, assign and deliver to United all unexpired leases on its branch office premises, together with all furniture, fixtures, files, supplies, records, books and other business equipment therein located, together with any and all furniture, fixtures, and business equipment of any kind of nature located at the executive and home offices and directly connected with the business to be reinsured. All States shall furnish to United a full and complete inventory hereof.

4. All States shall execute and deliver to United as of the effective date hereof any and all deeds, instruments of conveyance, transfers or assignments necessary or proper to fully vest in United the title of All States in and to the said policies, assets and rights hereby conveyed, and shall deliver to United on said date all tangible objects of every kind or nature pertaining to said assets or business conveyed.

5. United shall assume and reinsure, according to the terms thereof, all of the said policies and contracts of insurance issued, assumed or reinsured by All States in force and effect on the books of All States on the effective date hereof, and all policies and contracts theretofore issued or written by All States which have not been put in force by the payment of premium thereon but which shall thereafter be put in force by the payment of such premium, and all such lapsed policies and contracts issued, assumed or reinsured by All States as may, by their terms, be entitled to reinstatement and which shall be reinstated according to their terms, including, by way of enumeration and not of limitation, all claims

and demands for the cash surrender value thereof and all claims for extended insurance of said policies; and United covenants and agrees with All States and the holders of said policies and contracts, their beneficiaries, legal representatives and assigns, that, on the effective date hereof, it will assume, carry out and perform said policies and contracts, in the same manner and to the same extent as the same should have been performed by All States had this contract not been executed, all subject, however, to any and all defenses against claims and actions upon said policies or contracts which would have been available to All States had this contract not been made.

6. United shall, on the effective date hereof, accept and assume all of the assets and liabilities conveyed as set forth herein; and United shall on said date assume and hold All States harmless and release All States from any and all claims, debts, liabilities or causes of action in any way connected with or pertaining to said policies, business, risks, leases and other assets to be conveyed to United as aforesaid, including, by way of enumeration and not of limitation, the agreement of United to pay each and every claim which shall occur after the effective date hereof, together with all unpaid claims which shall have accrued prior to said date but which are unpaid on all of said policies and contracts of insurance; and including the agreement of United to assume and pay any and all commissions on uncollected premiums which All States would have owed to its agents on the said business reinsured, had this contract not been carried out; subject, however, to the right of United in all cases to make any defense, set-off or recoupment against any claimants which All States

could have made against any such claimants had this contract not been carried out. United shall assume, and have All States released from, all unexpired leases on the premises occupied by All States for its branch offices.

7. The computation of all assets, policy reserves and other reserves and liabilities as set forth in Paragraph 2 (a) (b) (c) (d) and (e), and the computation, inspection and verification of the debits and all other liabilities and assets passing hereunder, shall be made by the actuary or other representative of United; and in every case said computations shall be subject to the verification, confirmation and approval by United or its said representative.

8. All States shall not transfer, exchange, barter hypothecate or move from the ownership of All States any assets of All States pertaining to this agreement. No new contract of any substantial nature shall be entered into for any agent, employee or officer of All States, and no amendment to any present contract shall be made, nor shall the present remuneration to any agent, employee or officer of All States be changed in any amount, nor shall SII States incur, create or assume any unusual expense or liability other than in the ordinary course of business after the execution hereof.

9. In carrying out the terms of this agreement, All States shall comply in every respect with the laws of the State of Alabama and the rulings of the Department of Insurance of said State, and shall furnish to United certified copies of all ducments and instruments required by United to evidence All States corporate authority to act.

10. All States shall make every possible effort and shall cooperate fully with United to induce agents, employees, and representatives now in the service of All States and desired by United to enter and remain in the service of United for the purpose of taking over the said business and effecting the transfer of the business referred to in this agreement to United.

11. United, upon the approval of this contract as hereinafter provided, shall promptly deliver or mail, to the address last shown on the records of All States, its Certificate of Assumption to the assured named in all policies and contracts in force on the effective date hereof, and to any assignees thereof, which Certificate of Assumption shall bear the effective date of this contract, and by the terms of which United shall assume the liability of All States under each such policy or contract.

12. This agreement shall not become effective until the Monday following the fulfillment of the last of the following acts:

(a) This agreement shall have been approved and its execution duly authorized by the respective Board of Directors of United and All States at meetings duly and legally called and held for the purpose of acting thereon, as provided by the By-Laws of said companies, and the laws of the States of Illinois and Alabama.

(b) This agreement shall have been approved and its execution authorized by the stockholders of All States at meetings duly and legally called for the purpose of acting thereon, in accordance with and as provided by the laws of the State of Alabama.

(c) This agreement shall have been approved by the Departments of Insurance of the States of Illinois and Alabama and any other State or Department having jurisdiction hereover as provided by the applicable laws of said States.

13. Each of the parties hereto shall use its best efforts to complete all the said conditions enumerated in Paragraph 12 hereinabove prior to the 31st day of December, 1951. If (1) all of said acts shall not have taken place on or before said date; or (2) approval of this agreement shall be denied or its execution or consummation enjoined or restrained by any board, commissioner, Court or other administrative or judicial authority; or (3) this agreement fails to become effective by reason of any event beyond the control of either party; then in any of such events, this agreement shall become null and void and of no effect whatsoever, and each of the parties hereto shall be forthwith free of any liability to the other. Any escrow fees or charges incurred hereunder shall be borne by All States and United equally share and share alike.

In Witness Whereof, the parties hereto have by their duly authorized officers, pursuant to corporate authority duly granted, executed this agreement and caused their corporate seals to be attached the day and year first written.

ALL STATES LIFE INSURANCE COMPANY,

By"—

The signature, I believe, is Mr. Jennings', President. It is attested. United, the signature is illegible. It is attested, and properly acknowledged.

Mr. Grissom:
Will you mark this Plaintiffs' Exhibit 16?

(The instrument referred to was here marked Plaintiffs' Exhibit No. 16 for identification.)

Mr. Grissom:
If Your Honor please, I would like to try one more time to be able to make myself heard to the Court, and we offer Plaintiffs' Exhibit 16, which is another agreement whereby the United Insurance Company of Illinois ceded back to the Alabama corporation two classes of the business which had been ceded in the contract just read to United, and those two classes are the thrift endowments and certain industrial policies in Florida.

The Court:
Well, you have told me what is in it.

Mr. Grissom:
Yes, that is what I want. Now, this contract that was just read—

The Court:
Now, you can argue your case after a while, gentlemen.

Mr. Grissom:
Yes.

The Court:
Put that in evidence, if you wish.

Mr. Grissom:
Yes, we offer 16, and all Exhibits, in evidence.

The Court:
All right.

Mr. Grissom:
Mr. R. L. Tayloe, please.

R. L. TAYLOE, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:
Q. What is your name, please, sir?
A. R. L. Tayloe.
Q. Will you talk to the Court, Mr. Tayloe? You live here in Dallas?
A. I do.
Q. Are you connected in any way with Sears, Roebuck & Company, and Allstate Insurance Company, if so, state in what capacity?
A. Well, I am vice president and director.

The Court:
Can you hear over there?

Mr. Carrington:
Yes, sir.

The Court:
Speak out, now, Mr. Tayloe.

The Witness:
A director of Allstate.

The Court:
All right.

(By Mr. Grissom):

Q. And how long have you been connected with Sears, Roebuck & Company?

A. Twenty-six years.

Q. In a general way, where did you begin your work?

A. Well, my initial assignment was manager of the store at Tyler, Texas.

Q. And how long have you been in Dallas?

A. I have been in Dallas since 1939.

Q. Yes. What is your present position with Sears, Roebuck & Company, Mr. Tayloe?

A. I am vice president in charge of the southwestern territory which comprises the States of Texas, Oklahoma, New Mexico, Western Arkansas, Kansas, and Western Louisiana.

Q. State whether or not Allstate Insurance Company is a wholly owned subsidiary of Sears, Roebuck & Company?

A. It is a wholly owned subsidiary.

Q. State whether or not the name, "Allstate", is a trade name used by Sears, Roebuck & Company, and has been used ever since you have been with the company?

A. That is true.

Q. Is it also used by Allstate Insurance Company?

A. Yes.

Q. Do you have anything to do directly with the operations of Allstate Insurance other than as being a director—

A. Well, not directly.

Q. Yes.

A. Although, we are so closely affiliated and allied that we do get into the offices occasionally.

Q. Yes. Well, state whether or not Allstate Insurance Company sells its insurance through your stores?

A. It does. In almost every store, we have a booth where their agents office.

Q. Yes. Now, from your connection with Allstate and the Sears, Roebuck & Company, and living in this territory, tell the Court whether or not there is a definite meaning to the word "Allstate" insofar as Sears, and its affiliate companies are concerned.

A. Well, I think they are synonymous; they are the same.

Q. Yes. Now, after the All States Life Insurance Company was organized here last year, did you have any communication from insurance men, or otherwise, about inquiring whether or not Allstate or Sears, Roebuck & Company was now engaged in the life insurance business?

A. We have had, and we have had a request for information as to whether Sears would recommend a purchase of the stock, and why was Sears selling stock in the life insurance company, and whether or not it was a good investment.

Q. Well, state whether or not that has been—that opinion has been general among the people you have associated with?

A. That is true.

Q. Allstate is synonymous with Sears, Roebuck & Company's operation.

The Court:

Now, let the witness testify. You say Allstate is synonymous with Sears, Roebuck?

The Witness:
Judge, yes, it has been so closely—

The Court:
I am asking you, now.

The Witness:
Yes, sir.

The Court:
State, is that right?

The Witness:
Yes, sir.

The Court:
All right. Anything else?

(By Mr. Grissom):
Q. What do you mean by its being synonymous, Mr. Tayloe?
A. Well, so many of our customers of Sears, I think originally bought Allstate insurance because of their confidence in Sears, Roebuck, initially.

The Court:
Well, that is perfectly all hearsay. He doesn't know that.

Mr. Grissom:
Well, he can only know it from his contacts, yes, sir.

(By Mr. Grissom):

Q. Now, Mr. Tayloe, I will put it this way: how extensive has Sears, Roebuck & Company advertised the Allstate name and trade mark?

A. Well, Allstate is the name of our tire, and that is the largest selling replacement tire in the country, and we have advertised in Texas alone Allstate tires and Allstate products, we spent more than $2,000,000.00 in the last ten years just advertising those products.

The Court:

That is Allstate tires, automobile tires?

The Witness:

Yes, sir, Allstate tires, Allstate batteries, Allstate oil, Allstate automobile accessories.

The Court:

I see. Now, this is an Allstate Insurance case?

The Witness:

Yes, sir.

The Court:

You just name those that Allstate applied to.

The Witness:

You mean Allstate Insurance Company's advertising? I don't have those figures.

The Court:

Well, you didn't say anything about it; you just told me of the automobile accessories Allstate.

The Witness:
Yes, sir, that is right.

The Court:
That is right.

(By Mr. Grissom):
Q. Well, state whether or not the Allstate Insurance Company bears the Sears, Roebuck Company trade name of "Allstate", and uses it in its name?
A. Well, it does.

The Court:
All right.

(By Mr. Grissom):
Q. But you just don't have those figures?
A. No, sir.
Q. State whether or not Sears, Roebuck & Company advertises its trade name "Allstate' in means other than through the catalogue?
A. Oh, yes. In our retail stores, we advertise, in the newspapers in the towns where we are located.
Q. The figures you just gave for the pas' ten years, does that include radio advertising?
A. It doesn't include radio and television, just white space in newspapers and circulars and catalogues.
Q. And the catalogues?

The Court:
All right.

Mr. Grissom:
I believe that is—

The Court:
Any cross?

Mr. Newman:
Yes, may it please the Court, just a few questions.

Cross Examination.

By Mr. Newman:
Q. Mr. Tayloe, is the Sears, Roebuck & Company engaged in the life insurance business?
A. We are not.
Q. Mr. Tayloe, to the best of your knowledge and belief, has there ever been any confusion between Sears, Roebuck & Company and All States Life Insurance Company, an Alabama corporation?
A. I am not familiar with the Alabama—
Q. Do you know of any instance of confusion, sir?
A. Not here, no.

The Court:
All right.

(By Mr. Newman):
Q. Now, Mr. Tayloe, I would like to hand you what we would ask the Reporter to mark as Defendant's Exhibit No. 1.

(The instrument referred to was here marked Defendant's Exhibit No. 1 for identification.)

(By Mr. Newman):
Q. And I will ask you to identify the name specified on this page, and the four or five subsequent pages. Can you state, Mr. Tayloe, whether or not

those are names under which Sears, Roebuck & Company sells various articles of merchandise?

A. Yes, sir, they are.

Q. Are there approximately two or three hundred of such names?

A. I don't know how many there are.

The Court:

What is it you are asking him?

Mr. Newman:

Whether or not, Your Honor, there are two or three hundred names in addition to "Allstate" by which Sears, Roebuck & Company sell articles of merchandise; that Allstate is just one such name, Your Honor; that there are hundreds of others.

Just these pages, here.

The Court:

All right. Call your next witness, gentlemen.

Mr. Grissom:

I want Mr. Downey.

GEORGE D. DOWNEY, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. What is your name, please?

A. George D. Downey.

Q. That is right. Speak loud enough for all of us to hear so he can record. Where do you live, Mr. Downey?

A. 196 Linden Avenue, Elmhurst, Illinois.

Q. State whether or not you are connected with Sears, Roebuck & Company.

A. I am employed by Sears, Roebuck & Company.

Q. How long have you been so employed?

A. Since 1926, August.

Q. Have you been employed in their Home Office?

A. Yes, sir.

Q. What is now your present position with Sears, Roebuck & Company?

A. I am chief editor of the catalogue advertising.

The Court:
Chief editor of what?

The Witness:
Catalogue advertising.

The Court:
Of what sort of advertising?

The Witness:
Mail order catalogue.

The Court:
What?

The Witness:
Mail order.

The Court:
Mail order.

Mr. Grissom:
The catalogue.

The Court:

Mail order catalogue. Well, now, speak out. We are all hard of hearing here, now, you know.

Mr. Grissom:

Speak out as loud as you can.

(By Mr. Grissom):

Q. Now, Mr. Downey, how long have you been working in the advertising department?

A. Since 1926.

Q. Uh huh. You went there in 1926?

A. That is right.

Q. Do you know how Sears, Roebuck & Company came to adopt the name "Allstate"?

A. Yes, I do.

Q. All right. Do you have a record of the story of it?

A. Yes, I have a booklet here that outlines the names of the winners; at the time, there was a contest.

Q. Now, tell the Court briefly just how the name was acquired and how you came to adopt it.

A. In 1926, to create interest in a new tire, the company decided to hold a contest, and $25,000.00 in prizes was, I believe, awarded. As the result of that contest, there were 937,000 letters received, and I believe more than two million names suggested. As the result of this contest, the name "Allstate" was chosen as a name for the tire.

Q. Who got—I mean, did the word "Allstate" receive first prize?

A. It did.

Q. Yes, sir.

Mr. Grissom:
I am going to ask the Reporter to mark this story of the Allstate name, and the contest, Plaintiffs' Exhibit 17.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 17 for identification.)

The Court:
Try to shorten your record, please.

Mr. Grissom:
Well, I thought—

The Court:
The name was adopted by a contest.

Mr. Grissom:
All right.

The Court:
Entered into by thousands of people, some of whom suggested "Allstate", and that was adopted by the company. Now, that is the size of it, and that is all of it, isn't it?

Mr. Grissom:
Well, we have got the book, and I would like to offer it.

The Court:
All right. Anything else?

Mr. Grissom:
Yes.

(By Mr. Grissom):

Q. Now, Mr. Downey, state whether or not a part of your duties is kind of policing the use of the name "Allstate" so as to look after infringers?

A. Since 1938, I have handled all of the legal matters, that is, with respect to trade marks, for the company. I am liaison man between the company and our attorneys.

Q. Yes. Now, you have seen the stipulation which has been offered in evidence with the trade marks, the certificates representing—showing that the name "Allstate" has been filed with the Department of Patents, and you were given a certificate?

A. Yes, I have.

Q. And those are correct?

A. Yes, sir.

Q. Now, state whether or not you have made any effort to protect the use of the name "Allstate" against infringers?

A. Yes, sir, we have.

Q. All right. Do you have a list made up under your supervision, a correct list, showing over a period of time the cases which have been referred to the attorneys—

A. Yes, sir.

Q. —that have been handled? Do you have that in your hand?

A. Yes, sir.

Mr. Carrington:

If the Court please, the controversies the man had with others seem to us immaterial, and we object to that.

The Court:
Well, I have asked the lawyers to try to shorten your record as much as possible. You can do that quickly by saying it was placed in the hands of his attorneys when anybody would infringe it; that is all there is to it.

Mr. Grissom:
Well, I wanted, for the record, to offer this list. They have seen it, and pulled it out of the records in Chicago when they were up there on deposition. I didn't know there would be any objection to it; I am trying to offer it for the benefit of the Court and the benefit of the record.

Mr. Carrington:
We think it is immaterial, and to go into all of that would involve a great deal of time and effort.

The Court:
All right.

Mr. Grissom:
Mark that Plaintiffs' Exhibit No. 18.

The Court:
Anything else?

Mr. Grissom:
Just a minute, Your Honor, please.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 18 for identification.)

The Court:
Any cross?

Mr. Grissom:
I haven't finished yet.

(By Mr. Grissom):
Q. Mr. Downey, do you have any figures showing the expense to which Sears, Roebuck & Company has been put nationwide in advertising products by the name of "Allstate"?
A. Yes, sir, I have.
Q. All right. Would you give them to the Court; just read them to us for the record.

The Court:
Just lump it. How much was spent?

Mr. Grissom:
All right.
A. Since 1935, through 1955, advertising costs were in excess of $67,000,000.00, sales—

The Court:
All right.
A. —sales in excess of a billion, seven hundred million.

The Court:
All right.

(By Mr. Grissom):
Q. Now, do you have that all tabulated there on a piece of paper?
A. Yes.

Q. And you have given the totals?

A. Yes, sir, I have.

Q. Now, do you have it broken down as to the State of Texas?

A. Certain years.

Q. All right. What years do you have?

A. 1935, catalogue distribution—

Q. Catalogue—well, I am going to ask you that in a minute. Have you got the figures on money?

A. On money?

Q. On expenditures for advertising products bearing the name of Allstate in the State of Texas?

A. 1935, $375,000.00; in 1940, $625,000.00, and in 1950—I am sorry, that is the total sales for the company. For Texas alone, it would be: 1935, $17,750.00, and in 1940, $31,250.00, and in 1950, better than $176,000.00.

Q. Do you have 1955?

A. I do not have 1955.

The Court:

All right

(By Mr. Grissom):

Q. Those are advertising expenditures and not sales, is that right?

A. That is right.

Q. All right. Now, do you have your catalogue distribution nationwide?

A. Yes, sir. A total number of catalogues distributed through the nation since 1927 has been better than a billion, one hundred and forty-eight million, at costs of more than $535,000,000.00.

Q. What is your distribution in Texas for some reasonable period of time?

A. Since 1946, through 1955, it has been better—it is close to 19,000,000 catalogues.

Mr. Grissom:
I would like to have the Reporter number—

The Court:
Oh, now, he has testified; you are not a-going to put it in the record again.

Mr. Grissom:
Well, I want to get the details.

The Court:
It has been offered in oral testimony; you have got it down.

Mr. Grissom:
Well, I would—

The Court:
I am admonished by the Circuit Court somebody might want to appeal this case, to shorten the records shorten the records. Now, he has told what the records are, and now, you want to put the records in again. You are not going to do it.

Mr. Grissom:
Well, I offer those.

The Court:
He has already testified what is in them.

Mr. Grissom:
Yes, I realize that.

The Court:

Anything else you want to ask him?

(By Mr. Grissom):

Q. Now, Mr. Downey, do you know whether or not Sears, Roebuck & Company uses, in its advertising, an outline map of the United States with the name "Allstate" superimposed on it in block letters?

A. Yes, sir, it does.

Q. Now, when did it begin to use that map—

The Court:

You have that agreed to by the other side; you have that annexed as an Exhibit to your petition. In answering your petition, we have agreed that that is correct; so that is the purpose of the Rules.

Mr. Grissom:

Yes, I didn't believe the stipulation covered the date that we began using it, and that is what I am trying to prove here.

The Court:

No stipulation. If it is in the pleadings, the Rules provide in the pleadings, and that is what Mr. Carrington's firm has done; they have acknowledged that is correct in their pleadings, those Exhibits that are contained on your petition.

Mr. Grissom:

Yes. I don't think that includes the time we began to use it, and that it has been a continuous user up to now.

The Court:
Well, he has already testified to that.

Mr. Grissom:
Well, may I ask the witness?

The Court:
Oh, well—

(By Mr. Grissom):
Q. About when did you begin using the map?
A. 1932.
Q. Yes. Has it been in continuous use up to now?
A. Yes, it has.
Q. Has it been used a number of times in your catalogues, even the current ones?
A. Yes, indeed.
Q. Uh huh.

The Court:
Any cross, gentlemen?

Mr. Newman:
May the Court please.

Cross Examination.

By Mr. Newman:
Q. Will you please state for what purposes Sears, Roebuck now uses the name "Allstate"?
A. They use it to identify automobile parts and accessories, insurance, and service trade mark.
Q. Has it ever discontinued the use of the word "Allstate" for many products, tow rope, ink, carbon paper, roofing, building material, etc.?

A. It has discontinued its use on some items.

Q. I believe you testified that Sears, Roebuck used a map of the United States in outline form. Does that map ever contain state boundaries, Mr. Downey?

A. No.

Q. It does not.

The Court:

All right. Call your next witness.

(By Mr. Newman):

Q. Mr. Downey, do you know of any instance—

Mr. Grissom:

That is all, Mr. Downey, thank you very much. I would like to have Mr. Clarence V. Kenney.

CLARENCE V. KENNEY, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Your name is Mr. Clarence V. Kenney?

A. Yes, sir.

Q. Where do you live, Mr. Kenney?

A. 1050 Sunset Road, Winnetka, Illinois.

Q. Are you connected in any wise with Sears, Roebuck & Company, or Allstate Insurance Company?

A. I am employed by the Allstate Insurance Company.

Q. Yes. What relationship does Allstate Insurance Company bear to Sears, Roebuck & Company?

A. It is a wholly owned subsidiary.

Q. State whether or not you are a director in either one of the Plaintiff companies.

A. Director of the Allstate Insurance Company.

Q. How long have you been connected with Allstate Insurance Company?

A. Almost twenty-five years.

Q. How old a man are you?

A. Fifty-eight.

Q. What is your position with Allstate Insurance Company?

A. Senior vice president in charge of pricing, classifications, and the development of new lines.

Q. Now, do you have anything to do with policing of the trade name "Allstate", which Allstate Insurance Company uses?

A. In my capacity as senior vice president, and formerly as secretary, many of these items came to my attention. I turned them over to the legal department.

Q. Yes. Do you have a list of such items that have been handled?

A. No, I don't.

Q. You don't have such a list. Mr. Kenney, state whether or not Allstate Insurance Company confines its operations in anywise to the employees of Sears, Roebuck & Company?

A. The Allstate Insurance Company was organized to sell automobile insurance to Sears' customers at a savings; we now have three and a half million, of which I presume all except twenty-five or fifty thousand are customers of Sears.

Q. You mean how many policy holders running, is that what you are talking about?

A. Yes, sir.

Q. Do you know how many policy holders you have in Texas at this time?

A. Approximately 160,000, slightly under that, 158,000, or so.

Q. Well, now, then, could you state whether or not the advertising and the sales appeal of Allstate Insurance Company has been directed to the population as a whole through Sears, Roebuck & Company's organization?

A. Well, the advertising has been directed to the entire public; we have endeavored to get them to buy Allstate insurance.

Q. You never attempted to limit it in anywise to Sears employees?

A. No, sir.

Q. Or Allstate employees?

A. No, sir.

Q. Could you give us some figures showing the growth of Allstate Insurance Company?

A. In what respect, in premium volume?

Q. Well, in premium volume.

A. Well, in 1931, when we wrote only a matter of a few thousand—we wrote $260,000,000.00 of premiums last year. Now, that has been a steady rise throughout the years.

Q. Yes, sir. State whether or not Allstate Insurance Company has always used the name "Allstate"?

A. Yes, sir.

Q. And state whether or not it got the name from Sears, Roebuck & Company?

A. That, I wouldn't know. I joined them six weeks after; we were using it.

Q. All right. All right. They were using it and Sears was using it?

A. Yes, sir.

Q. And they had been using it?

A. Yes, sir.

Q. State whether or not Sears has been—I mean, Allstate Insurance Company has been operated as a wholly owned subsidiary of Sears?

A. It has been operated as an independent insurance company; we are a separate corporation under the laws.

Q. Yes. I understand.

A. We own all of our stock, and we are a subsidiary in that respect.

Q. Yes. Now, do you merchandise your insurance policies through at least part of the Sears, Roebuck & Company's facilities?

A. The vast majority of our agents, about seventy-five percent countrywide, and almost all of them in Texas, operate out of Sears, Roebuck sales locations, stores, order offices, and so forth.

Q. Mr. Kenney, what position in the insurance industry, so far as size in the writing of full coverage automobile insurance—

A. Is Allstate?

Q. I am asking you what position it has attained.

A. Allstate writes more premiums on automobiles than any other company in the world.

Q. Yes.

A. We are the largest direct writers.

Q. Now, what do you mean by "direct writer"?

A. We are the largest—well, we are the largest automobile insurance company, let's say that.

Q. Yes. Well, you operate—you sell through agents hired by the company?

A. Yes, sir.

Q. I see. Employees?

A. Yes, sir.

Q. Now, what has been the growth, businesswise, premium income-wise, of Allstate Insurance Company in the State of Texas?

A. Last year, we wrote approximately, or nearly, $12,000,000.00 in automobile premiums, and we were the first company in volume of business, except that the General Motors subsidiary, which finances automobiles and are insurors of that collision insurance in their own subsidiary, actually wrote more dollars; but of general automobile insurance, we were the number one company in the State.

Q. And I believe you stated that the majority of that was written through these employees of the company that operate out of the Sears stores here?

A. Practically ninety-five percent.

Q. Yes. Now, what means of advertising does Allstate Insurance Company, as such, have?

A. We advertise in the Sears catalogues, in the Saturday Evening Post, in various magazines, TV spots, circulars of all kinds, the usual methods of getting your name before the people.

Q. State whether or not your agents pass out pamphlets and circulars and one thing or another?

A. Yes, sir.

Q. State whether or not Allstate Insurance Company has used, and does still use, in its advertising an outline map of the United States, with the word "Allstate" superimposed on it?

A. They have used it ever since I have been there and still use it.

Q. Yes. Do you recall whether or not—do you recall whether or not you used an outline map of the United States with the name "Allstate" superimposed on it, with an eagle kind of clustered around it?

A. We have that, yes.

Q. When did you start using that?

A. That was somewhere around '35 or '36. In connection with a calendar that we struck upon that design.

Q. State whether or not that is a copy of the design?

A. Yes, sir.

Q. Now, in what ways is this design used?

A. Well, it is placed upon advertising, on circulars, on some of our policies, on various—any type of material that we send out.

Q. Yes, sir.

A. Not on every piece.

Q. Yes, sir.

A. But we have it on our letterheads, not all of our letterheads, some of our letterheads. We try to have a variety.

Mr. Grissom:

Will you mark this Plaintiffs' Exhibit whatever it is?

The Court:

Well, it is attached as an exhibit to your petition.

Mr. Grissom:

Well—

(The instrument referred to was here marked Plaintiffs' Exhibit No. 19 for identification.)

The Court:

Anything else?

Mr. Grissom:
I believe that is all.

The Court:
Any cross:

Cross Examination.

By Mr. Newman:
Q. Mr. Kenney, please state whether or not, in your advertising of Allstate Insurance, you normally identify that company by words as having been founded or organized—

The Court:
I don't know what you are talking about over there, counsel.

Mr. Carrington:
Get over there.

The Court:
It is difficult to hear in this Courtroom, you know.

Mr. Newman:
Yes, sir.

The Court:
And I hate to ask counsel to apeak a little louder. I am not sure I am not deaf.

Mr. Newman:
That is perfectly all right, Your Honor.

The Court:

Yes.

(By Mr. Newman):

Q. Mr. Kenney, please state whether or not, in the advertising of Allstate Insurance Company, you normally identify that company as having been organized, or founded, by Sears, Roebuck & Company?

A. Yes, sir.

Q. Do your advertisements normally state that it is a company organized, or having been founded, by Sears, Roebuck & Company?

A. Yes, sir.

Q. Does your advertising normally state that the home office is Skokie, Illinois?

A. Yes, sir.

Q. Does your company write or conduct any life insurance business?

A. No. sir.

Q. Is it planned that your company will write or conduct any life insurance business?

A. Yes, sir.

Q. When?

A. As soon as I can—

The Court:

Speak out, now, so we can hear you.

A. —as soon as I can conclude the negotiations with two men, one an economist and one an actuary. One has passed his physical exam.

Q. Do you plan to conduct that business through the corporation of which you are an officer, or a separate corporation?

A. A separate corporation.

Q. Is it permissible to conduct that business through the company in which you are an officer?

A. No, sir.

Q. Do you know of any instance of confusion between Allstate Insurance Company and All State Life Insurance Company of Alabama?

A. Yes, sir.

Q. What are those instances?

A. Through the cities and parties, we have received letters and remittances, complaints, but primarily letters and reports of accidents or deaths, and the remittances; because the United State Post Office had already identified the word "Allstate" as being Sears, Roebuck, and they came to the Canal Street Station in Chicago automatically by every postal employee throughout the country.

Q. Did you ever receive a sufficient number to cause you to protest that, or complain to the Alabama corporation?

A. There was nothing we could protest to them; it was not their fault; we merely forwarded them on.

Q. Did your company ever protest the licensing of the Alabama corporation in the various states in the United States where it has been licensed?

A. No, sir.

Q. Is it a fair statement that in your advertising, and policies, by your company that your company now identifies itself by an emblem with outstretched hands holding an automobile, stating "You are in good hands with Allstate"?

A. We identify that with the automobile line.

Q. Is it correct that your automobile line is approximately ninety percent of your business?

A. Yes, sir.

Q. Is it correct that most of your agents write out of Sears, Roebuck stores?

A. Yes, sir.

Q. That they have booths there in the stores where they can be known to the public as affiliated with Sears, Roebuck?

A. Yes, sir.

Q. Does Allstate Insurance Company own, as a subsidiary, a corporation with the name of Allstate Fire Insurance Company?

A. The Allstate Insurance Company owns the Allstate Fire Insurance Company.

Q. Has there been any confusion between those companies because of the similarity of names?

A. There couldn't be; because no separate fire company policy was ever issued; we issued a joint policy with the names of both companies at the top in those states which would not permit a casualty company to write fire insurance on an automobile; otherwise, the fire company had no dealings with the public.

Q. Has Allstate Insurance Company ever been confused with any other insurance company in all of its dealings?

A. Oh, I don't recall.

Q. Has Allstate Insurance Company lost any customers or prospects in the insurance business because of any conduct or activities of the Defendant in this case?

A. That, I could not say; because they haven't written—said they didn't come to us because of that.

Q. Do you know of any instance where your company has lost any such business?

A. No, sir.

Mr. Newman:
That is all, Your Honor. Thank you.

The Court:
All right. Call your next witness.

Mr. Grissom:
Now, Your Honor, please, one thing I overlooked.

Re-Direct Examination.

By Mr. Grissom:
Q. State whether or not you advertised this Allstate Insurance by circulars, handbills, one thing and another?
A. Yes, sir.
Q. Now, state whether or not you used the outline map with "Allstate" imposed on it on a deal of that literature?
A. Yes, sir.

Mr. Grissom:
I am going to ask the Reporter to identify this as Plaintiffs' Exhibit 20.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 20 for identification.)

(By Mr. Grissom):
Q. I show you Plaintiffs' Exhibit 20, and ask you if that isn't a handbill or circular that your agents hand out in Texas?
A. Yes, sir.
Q. Does it have the outline map on it?

A. No, this was a Texas special safety responsibility.

Q. Well, look on the back and see if you don't.

A. Then, there is the small medallion over here, which has the entire country, and the word "Allstate".

Q. Outline map of the entire United States?

A. Yes, sir.

Mr. Grissom:

All right. I offer that in evidence.

The Court:

All right.

(By Mr. Grissom):

Q. Now, then, that map, with "Allstate" superimposed on it, is used in much of your literature?

A. Yes, sir.

Q. Not on all, but on a great part of it?

A. That is right.

The Court:

All right.

Mr. Newman:

If the Court please, just one question on recross.

Re-Cross Examination.

By Mr. Newman:

Q. Mr. Kenney, I will show you what has been affixed on the original complaint as Plaintiffs' Exhibit B.

A. Yes, sir.

Q. And I will ask you if your company has ever used the map of the United States showing the states designated as such like this does?

A. Oh, no.

Mr. Newman:

That is all.

The Court:

All right. Call your next witness.

Mr. Grissom:

Gene Archer. Are you Mr. Archer? Oh, pardon me.

The Marshal:

He is delayed; he is sitting down there in the other Courtroom.

Mr. Grissom:

What?

The Marshal:

He is down in the corner; we are sending after him.

Mr. Grissom:

Call Mr. Joe Belden.

The Marshal:

Joe Who?

Mr. Grissom:

Belden. I think he is Joe. Wait a minute, here is Mr. Archer. Mr. Archer hasn't been sworn. Would you come around here and be sworn?

GENE ARCHER, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Mr. Archer, will you please take the stand there, and talk loud enough for all of us to hear. What is your name, please, sir?

A. Gene.

Q. Speak loud enough; speak to the Court, Mr. Archer.

A. Gene Phelan Archer.

The Court:

Archer?

The Witness:

Yes, sir.

The Court:

See, these men way over here have got to hear you.

(By Mr. Grissom):

Q. Speak out loud, if you will; pitch your voice some. Mr. Archer, you live in Dallas?

A. Yes, sir.

Q. What is your business or occupation?

A. I am an actuary.

Q. Do you work for any company?

A. Yes, sir, the Southland Life Insurance Company.

Q. How long have you worked for the Southland Life Insurance Company?

A. Three and a half years.

Q. What training have you had as an actuary?

A. I have been in the life insurance business in actuarial work for seven years, and I am a member of the Society of Actuaries.

Q. Now, do you know how to analyze an insurance company's annual statement?

A. I believe so, yes, sir.

Q. State whether or not it is a fact that the Plaintiffs, through their attorneys, have submitted to you the six last annual reports of All States Life Insurance Company of Alabama?

A. Yes, sir.

Q. And have you analyzed them?

A. Yes, sir, I have.

Q. Now, would you begin with the first one, which, I believe was '50, wasn't it?

A. Yes, sir.

Q. And tell the Court briefly what it shows, according to your interpretation.

Mr. Carrington:

If the Court please, it appears to us that they are asking for any analysis of documents already in evidence that speak for themselves.

The Court:

I don't see the relevancy of this matter, gentlemen.

Mr. Grissom:

Well, Your Honor please—

The Court:

The All States, according to the testimony you have put on, has sold its insurance, reinsured it, rather, in the Illinois matter.

Mr. Grissom:
Yes.

The Court:
Whether it has a lot of business or didn't have much business, what is the difference?

Mr. Grissom:
Well, I think it makes a lot of difference.

The Court:
I am not arguing with you. They objected and I sustained the objection.

Mr. Grissom:
If Your Honor please, can I complete my record?

The Court:
No, you can't complete it now; you can have your exception.

Mr. Grissom:
Well, may I state what I expect to prove—

The Court:
No, sir.

Mr. Grissom:
—by Mr. Archer?

The Court:
No, sir, you can't do that; you have your papers here, and you can make that your record to suit yourself.

Mr. Grissom:
I take the position, though, that a record of that time is not readily read by one not an actuary. It is just like an X-ray in a personal injury case; you have got to have somebody who can read it.

The Court:
I don't want any argument from you at this time.

Mr. Grissom:
Yes.

The Court:
The objection is made, and I sustain it.

Mr. Grissom:
All right. We except.

The Court:
Call your next witness.

Mr. Grissom:
All right. Thank you, Mr. Archer.
Wait, let me ask you another question here.

(By Mr. Grissom):
Q. Mr. Archer, have you made a study of life insurance stocks?
A. Yes, sir, I have.
Q. You recognize that the promoter of a company is entitled to some pay for his promotion?
A. Yes, sir.
Q. Now, then, let's assume, as we expect to show here in a few minutes, that a million and a half of the total authorized shares in the All States Life In-

surance Company of Texas was purchased by one man, or one interest, at twenty cents a share. What, according to your knowledge of the life insurance business, would be a fair price to sell additional shares in this same company to the public?

Mr. Carrington:
If the Court please—

The Court:
I sustain the objection, Mr. Carrington.

Mr. Grissom:
All right, sir.

The Court:
Anything else?

Mr. Grissom:
I would like to state what I expect to prove by the witness.

The Court:
I have just told you that the objection is sustained.

Mr. Grissom:
All right. Thank you.

The Court:
We don't follow that practice here.

Mr. Grissom:
All right. We except.

The Court:
You have your exception, and that is all there is to it.

Mr. Grissom:
T at is all.

The Court:
Call your next witness.

Mr. Grissom:
Mr. Belden. You take the stand, Mr. Belden.

JOE BELDEN, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:
Q. What is your name, Mr. Belden?
A. Joe Belden.

The Court:
What is the name?

The Witness:
Joe Belden.

The Court:
George What?

The Witness:
Joe Belden, (spelling) J-o-e B-e-l-d-e-n.

The Court:
(Spelling) B-e-l-d-e-n. Can't you speak out like that?

The Witness:
Yes, sir.

The Court:
All right.

(By Mr. Grissom):
Q. Joe, your first name is Joe?
A. Right.
Q. Where do you live?
A. 1419 Cedar Hill in Dallas.
Q. How long have you lived in Dallas?
A. Four years.
Q. What is your business or occupation?
A. I am a market and opinion researcher.

The Court:
You are what?

The Witness:
Market and opinion researcher.

The Court:
Market and a what?

The Witness:
Opinion researcher.

The Court:
Market and opinion researcher?

The Witness:
That is right, sir.

The Court:
All right.

(By Mr. Grissom):
Q. What do you do as such?
A. We do surveys among the public to find out their likes and dislikes on products, brands, and their opinion on public issues.

Mr. Grissom:
I am going to ask the Reporter to mark an instrument here Plaintiffs' Exhibit whatever it should be there.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 21 for identification.)

The Court:
Is it your desire to prove by him what the public says to him?

Mr. Grissom:
Yes, sir, it is my desire to prove by him—

The Court:
All right. I am not a-going to let you do it; it is hearsay; you can put the public on if you want to. That is hearsay; I am not going to have it.

Mr. Grissom:
All right.

(By Mr. Grissom):

Q. Mr. Belden, did you undertake to make a survey for Sears, Roebuck & Company and Allstate Insurance Company to show what connection the public thought there was—

The Court:

Why do you insist, now? I have told you you can't do it.

Mr. Grissom:

Well, well—

The Court:

No. I am telling you now; I have ruled now, and you can't do it.

Mr. Grissom:

Well, if Your Honor please—

The Court:

That is hearsay.

Mr. Grissom:

In order to show—

The Court:

No, sir. Do you want to stay in this case, young man?

Mr. Grissom:

Certainly, I don't want to violate—

The Court:

I told you you can't do it; that is hearsay.

Mr. Grissom:
I wasn't trying to prove the survey; but in order to be able to get those people that he used to make the survey, I had to prove by him—

The Court:
Do you want to ask him anything else?

Mr. Grissom:
Yes.

(By Mr. Grissom):
Q. In making this survey, which the Court won't let us offer, in a general way, how did you do it?
A. We interviewed one thousand people, a representative sample of the public in Dallas.

The Court:
Well, that is far enough.

(By Mr. Grissom):
Q. Yes. How many people did you—

The Court:
Why do you want to take up the time of the Court?

Mr. Grissom:
Yes. We except.

The Court:
That is hearsay; that is the first thing you learn as a lawyer.

(By Mr. Grissom):
Q. What—

The Court:
No, no argument with me, now.

Mr. Grissom:
If Your Honor please—

The Court:
You can pay the Marshal $50.00 before you go any further. If you don't pay it, he will take you to jail.

Mr. Grissom:
I am sorry, Your Honor.

The Court:
You must abide by the rules of the Court, Mr. Lawyer.

Mr. Grissom:
Yes.

The Court:
Do you want to ask him anything else?

Mr. Grissom:
No, that is all.

The Court:
Call your next witness.

Mr. Grissom:
Give me the names. Now, Your Honor please—

The Court:
I believe I will remit that fine for the time being.

Mr. Grissom:
Yes, sir.

The Court:
I caution the attorney, now.

Mr. Grissom:
Well, now, if Your Honor please—

The Court:
I have known you a long time, you know how to conduct a case, and you know what the business of the Court is.

Mr. Grissom:
Yes, sir.

The Court:
And we try to run this Court in accordance with the admonitions of the Circuit Court of Appeals, and all rules of procedure, and let's try to do it, now, gentlemen. Call your next witness.

Mr. Grissom:
And I apologize to the Court.

The Court:
All right.

Mr. Grissom:
But I believe there was a misunderstanding between us on one point.

The Court:
Do you have some other witnesses you want to put on?

Mr. Grissom:

Yes, if Your Honor please, I want to tell the Court what I now plan to do. I have several of the ladies employed by Mr. Belden to interview these people.

The Court:

I have told you you cannot put that evidence on.

Mr. Grissom:

Yes.

The Court:

That is hearsay.

Mr. Grissom:

But I want the record to show that I had it here; that is all I wanted to do. Now, I want Mr. B. L. Jones. Will you take the stand there, Mr. Jones, please, sir?

B. L. JONES, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. What is your name, please, sir?

A. B. L. Jones.

Q. Will you talk so the Court and the rest of us may hear it. Where do you live, Mr. Jones?

A. 4517 Ash Lane.

The Court:

Can you speak a little louder?

The Witness:
Yes, sir.

The Court:
All right. Try to do it.

(By Mr. Grissom):
Q. Mr. Jones, were you interviewed in connection with a survey being made for Sears, Roebuck & Company about the popularity of the name "Allstate", and its connection with Sears, Roebuck?
A. Yes, sir.
Q. Do you remember about what that was?
A. There were three of four questions.
Q. About when it was?
A. About, I imagine, a week ago.
Q. Yes, sir. Now, do you recall whether those questions, and your answers, were reduced to writing and signed by you?
A. Yes, sir.

Mr. Grissom:
Let me have the Court identify it, I mean the Reporter.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 22 for identification.)

(By Mr. Grissom):
Q. I hand you Plaintiffs' Exhibit 22—I beg your pardon. State whether or not that is your signature, B. L. Jones?
A. It is.
Q. Down at the bottom?
A. It is.

Q. State whether or not the answers up here to the questions are your answers that you gave to the interviewer.

A. Yes, sir.

Q. Now, I read here, you say, "B. L. Jones", and you give your address, and number two, "What comes to your mind when I say the brand name, 'Westinghouse'?" And your answer is, "If it is Westinghouse it's got to be good. Anything in appliance." 3. "What does the brand 'Kodak' mean to you?" And you said "Brownie".

A. That is correct.

Q. 4. 'What does 'Allstate' mean to you?" "Auto tires", is that correct?

A. Yes, sir.

Q. "If you wanted to buy Allstate insurance, where would you go?" What was your answer?

A. Sears, Roebuck.

Q. Sears, Roebuck & Company. 7. "Who would you say owns and operates the All States Life Insurance Company?" Answer: "Sears and Roebuck".

Mr. Grissom:

We offer Exhibit 22 in evidence. That is all.

The Court:

Any cross, gentlemen?

Mr. Carrington:

No cross.

The Court:

All right. Call your next witness.

Mr. Grissom:

All right. Mr. Art Shelton. Mr. Shelton, would you come around here, please.

ART SHELTON, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. What is your name, please, sir?

A. Art Shelton.

Q. You were sworn a while ago, weren't you, with the rest of them?

A. Yes, sir.

Q. Would you sit there, now, and talk loudly so we can all hear you?

A. I will.

Q. Where do you live, Mr. Shelton?

A. 1608 South Polk.

Q. State whether or not you were recently interviewed by some interviewers, or an interviewer, from the Belden Associates in connection with trying to find out the relationship, or how the public thought of Allstate, and Sears, Roebuck & Company?

A. I was, yes, sir.

Q. Were your answers reduced to writing?

A. Yes, sir.

Q. To various questions?

A. Yes, it was.

Q. And you signed it?

A. Yes, sir.

Mr. Grissom:

I am going to ask the Reporter to identify it.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 23 for identification.)

Mr. Carrington:

If the Court please, instead of eliciting this man's views, the sort of questioning, why he signed, under the circumstances—

The Court:

Yes, he can just ask him what he said about the matter here.

Mr. Carrington:

What he thinks, and not what he said under some other circumstances. If the Court please, it seems to me—

Mr. Grissom:

Well, I don't know if I understand; I want to say—

(By Mr. Grissom):

Q. What does Allstate mean to you?

A. It means Sears and Roebuck to me.

Q. If you wanted to buy Allstate insurance, where would you go?

A. Sears and Roebuck.

Q. Have you ever heard of the All States Life Insurance Company?

A. Yes.

Q. When did you hear of it?

A. When I became involved in this.

The Court:
Speak out so I can hear you.
A. When I came up to Mr. Grissom's office yesterday.

The Court:
Yesterday.

(By Mr. Grissom):
Q. You came up to my office and I talked to you about this?
A. Yes.
Q. Is that the first time you had ever heard of All States Life Insurance Company?
A. Yes, sir.
Q. Prior to that time, you never had heard of it?
A. No, sir.
Q. Uh huh. Well, prior to that time, before you came to my office, who would you say owned and operated All States Life Insurance Company?
A. Sears and Roebuck.
Q. That is all. This Exhibit here was the instrument that you signed?
A. It was.
Q. Answers to the questions?
A. Yes, sir.

Mr. Grissom:
We offer the Exhibit.

Cross Examination.

By Mr. Carrington:
Q. What is your business, sir?
A. Real estate.

Q. Not in the insurance business?
A. No, sir.

Mr. Carrington:
That is all.

The Court:
All right. Call your next witness.

Mr. Grissom:
Mr. Grant Mock, (spelling) M-o-c-k, Mock. Is it all right for Mr. Shelton to remain in the Courtroom? I don't think we need him. Will you excuse him?

Mr. Carrington:
It is all right with me.

The Court:
He can be excused, if the other side doesn't have any objection. You can excuse your witnesses as you call them, if you ask the other side. No use to keep them waiting any more.

Mr. Grissom:
All right.

GRANT MOCK, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:
Q. What is your name, please, sir?
A. Grant Mock, M-o-c-k.

The Court:
What is your name?

The Witness:
Mock, (spelling) M-o-c-k.

The Court:
Speak out so I can hear you.

The Witness:
Mock.

The Court:
(Spelling) B-r-o-c-k, Brock?

The Witness:
(Spelling) M-o-c-k.

The Court:
(Spelling) M-o-c-k, Mock?

The Witness:
Yes, sir.

The Court:
Can you speak out like that?

(By Mr. Grissom):
Q. Mr. Mock, where do you live?
A. Galveston.
Q. State whether or not you were ever employed by Sears, Roebuck & Company?
A. Yes, sir.
Q. State whether or not you acquired an interest in their employees' benefit fund?
A. Yes, sir.

Q. You owned some stock in the Sears, Roebuck at one time?

A. Yes, sir.

Q. Do you still own it?

A. No, sir.

Q. Now, when did you quit Sears, Roebuck & Company?

A. Five months ago, in August.

Q. Mr. Mock, did you ever hear of All States Life Insurance Company, the Texas company?

A. Yes, sir.

Q. Well, tell the Court how you came to learn about it.

A. The Allstate?

Q. All States Life Insurance Company.

A. All States. A gentleman called on me by the name of Wilkinson, the salesman.

Q. All right. What was his purpose?

A. He asked me if I was interested in Allstate insurance.

Q. What did you tell him.

A. Yes, sir.

Q. What did he say?

A. He offered to sell it to me at $5.00 a share. At that time, I had about forty shares of Sears stock, and I told him I was interested in it; but at the present time, I was going to cash my stock and for him to come back in a couple of days; so I went direct to Sears and asked the man if Allstate was selling stock, and he said, "No". I said, "There was a man at my house trying to sell it to me." So I didn't do anything. I waited about a week for this salesman to come back, and I asked him what insurance he was selling, and he said, "Allstate", and I said, "Allstate is not selling their stock", and when

he found out I was from Sears, he changed it to "All States"; then I run him off.

Q. When you heard—first heard of the name of All States Life Insurance Company, state whether or not you thought it was a Sears organization?

A. Yes, sir.

Mr. Grissom:

You may have the witness.

Cross Examination.

By Mr. Carrington:

Q. All right. Did he show you a prospectus?

A. No, sir.

Q. What is your business since you left Sears and Roebuck?

A. I own an Amlico Service Station.

The Court:

All right. Call your next witness.

Mr. Grissom:

That is all.

Mr. Carrington:

That is all.

Mr. Grissom:

I want Mr. Joseph W. Harnell.

JOSEPH W. HARNELL, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Mr. Harnell, were you sworn this morning with the rest of them?

A. Yes, sir.

Q. All right. Have a seat there. What is your name, please, sir?

A. Joseph W. Harnell.

The Court:

Wait. Hold on, now.

(By Mr. Grissom):

Q. You will have to speak out loud so we can hear you.

A. Joseph W. Harnell. (Spelling) H-a-r-n-e-l-l.

Q. (Spelling) H-a-r-n-e-ll, double "l", is that right?

A. Yes.

Q. Where do you live?

A. 1617 Chappell Street.

Q. How long have you lived in Dallas?

A. Since 1948.

Q. Have you ever been connected with Sears, Roebuck & Company, or any of its subsidiary companies?

A. No, I haven't.

Q. State whether or not anybody has ever approached you to sell you stock in All States Life Insurance Company?

A. Yes, they have.

Q. About when?

A. About the first part of January, this year.

Q. What was it this man stated to you?

A. He asked me if I was interested in buying some stocks in the Allstate Life Insurance Company, and he told me if I bought a block of twenty-five, I would get it for $100.00, so much down and so much a week.

Q. Well, did you ask him any questions?

A. No, I just—I just asked him about—hadn't had a pay check come in, and I said, "Wait a week or two weeks until I have some money come in. Let me talk it over with my wife," and then the bartender winked at me, and the next day, I called up Sears and Roebuck and asked them to verify the prospectus.

The Court:

Can you hear him, Mr. Reporter? Speak out a little louder.

A. I called Sears, Roebuck & Company.

(By Mr. Grissom):

Q. What did you find out?

A. Well, they just laughed over the phone; they said they didn't sell stocks; it goes to their employees.

Q. Well, now, did you have any other conversation with this man?

A. No, I didn't.

Q. Did he tell you that All States Life Insurance Company was not connected with Sears, Roebuck & Company?

A. I asked him if it was Sears and Roebuck, and then he sort of evaded the question, and showed me his prospectus there, and gave me that spiel about twenty-five shares for $100.00.

Q. Did he ever tell you that All States Life Insurance Company was not a Sears, Roebuck & Company enterprise?

A. No, he didn't say that.

Q. He did not.

Mr. Grissom:

You may have the witness.

Cross Examination.

By Mr. Carrington:

Q. What is your business, sir?

A. Chance Vought Aircraft, sheet metal.

Q. Who was this man who tried to sell you this stock?

A. Just a moment. F. J. Gooch.

Q. A Dallas man?

A. That, I don't know, sir.

Q. Are you being paid expenses in connection with your testimony?

A. Just my wages, days wages.

Mr. Carrington:

That is all.

Re-Direct Examination.

By Mr. Grissom:

Q. Do you have there what this Mr. Gooch gave you?

A. Yes, sir, I do.

Mr. Grissom:

I would like to have the Reporter identify it as Plaintiffs' Exhibits whatever they are; there are two pieces.

(The instruments referred to were here marked 'Plaintiffs' Exhibits Nos. 24 and 25 for identification.)

Mr. Grissom:
I hand the counsel for the Defendant Plaintiffs' Exhibits 24 and 25, which I understand he would like to see.

(By Mr. Grissom):
Q. This Mr. Gooch gave you these Plaintiffs' Exhibits 24 and 25?
A. Yes, sir.
Q. Now, have you read them?
A. Well, I just glanced through them.

Mr. Grissom:
We offer them in evidence, 24 and 25.

The Court:
They are this gentleman's papers.
Do you want the papers?

The Witness:
It makes no difference to me, Your Honor; I am not interested in them.

The Court:
You are not interested in them?

The Witness:
No, sir.

The Court:
All right.

Mr. Grissom:
Thank you very much.

The Court:
They can be introduced.

Mr. Grissom:
Thank you very much.

The Court:
Any cross, gentlemen?

Mr. Carrington:
No, sir.

The Court:
Call your next witness.

Mr. Grissom:
Mrs. Lola Basson. Mrs. Basson, will you take a seat here in the witness chair.

MRS. LOLA BASSON, being first duly sworn, testified on her oath as follows:

Direct Examination.

By Mr. Grissom:
Q. What is your name, please?
A. Mrs. Lola Basson.
Q. Will you talk, now, loud enough for the Court and the rest of us to hear it. Mrs. Lola Basson?
A. Yes, sir.
Q. That is (spelling) B-a-s-s-o-n?
A. Yes.

Q. Where do you live, Mrs. Basson?
A. 9410 Second Avenue.
Q. How long have you lived there?
A. About eight years.
Q. How long have you lived in Dallas?
A. About eight years.
Q. Are you a customer of Allstate Insurance Company?
A. I am.
Q. How long?
A. Since 1948.
Q. Are you a customer of Sears, Roebuck & Company?
A. I am.
Q. State whether or not you are a satisfied customer of both Plaintiffs?
A. Very much so.
Q. You say you are a customer of Allstate Insurance Company?
A. Yes, sir.
Q. What do you—what have you bought from them?
A. Well, in the line of—

The Court:
Speak out so we can hear you.
A. I have a washing machine; I have Allstate automobile insurance.

The Court:
You bought a washing machine, and what?

The Witness:
I had numerous of household appliances.

The Court:
Huh?

The Witness:
Numerous household appliances of Sears.

The Court:
All right.

(By Mr. Grissom):

Q. Well, you see, my question was: what have you bought from Allstate Insurance Company?

A. It would be automobile insurance.

Q. Have you bought more than one policy?

A. Yes, sir.

Q. Have you recommended it to other people?

A. Yes, sir.

Q. Now, Mrs. Basson, since July 1 of 1955, state whether—have you been approached by someone trying to sell stock in All States Life Insurance Company?

A. Yes, sir.

Q. Will you tell the Court about that?

A. Yes, sir. A lady called me, and said, "Mrs. Basson, I understand that you are, and your husband, I understand that you and your husband have insurance with Allstate Insurance Company." I said, "Yes ma'am, I do," and she said, "Are you satisfied with it?" and I said, "Very much so," and I went ahead and told her that I had numerous insurance policies in my files, and I would recommend and stand behind Allstate Insurance more than any insurance that I had, and she asked me how I would like to have stock with Allstate Insurance, and it just excited me; because I was very much interested in having stock with Allstate.

Q. Are you a business woman?

A. I am.

Q. What kind of business do you operate?

A. I have formerly had a cafe, filling station. Right now, my husband has a glass shop.

Q. Anyway, you would be interested in buying Allstate Insurance Company stock. Well, what happened, now, after that; tell me the story?

A. After that I was talking with one of the agents with Sears Allstate Insurance—automobile insurance, and he asked me not—he said it had no connection with Sears, Roebuck whatsoever, and I said, "In that case, I dont want it".

Q. Did you ever see the person again that tried to sell you stock in Allstate Insurance Company?

A. No, sir.

Q. I see.

The Court:
All right.

(By Mr. Grissom):

Q. Now, state whether or not when All States Life Insurance Company was mentioned to you, state who did you think owned it.

A. Sears, Roebuck.

Mr. Grissom:
You may have the witness.

The Court:
Any cross, gentlemen?

Cross Examination.

By Mr. Carrington:

Q. Who was this man, do you know?

A. No, sir, I don't know; I asked him to give me his name and his telephone number. He gave me his name and telephone number, and that is when I called Allstate and asked them about it.

Q. You don't know now his name or telephone number?

A. No, sir, I don't.

Q. That is the only time you ever saw him?

A. Yes, sir.

Q. Didn't he leave you a prospectus or papers, or show them to you, or in any way—

A. No, sir.

The Court:

All right.

Mr. Carrington:

That is all.

Mr. Grissom:

That is all. Thank you very much.

The Court:

Call your next witness.

Mr. Grissom:

Jack Chappell.

JACK CHAPPELL, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Mr. Chappell, will you please have a seat there.

A. Yes.

Q. What is your name, please, sir?

A. J. D. Chappell.

Q. Will you speak loud enough for all of us to hear?

A. J. D. Chappell.

Q. Where do you live, Mr. Chappell?

A. I live in Houston, Texas.

The Reporter:

Wait a minute. My paper is stuck in my machine.

(By Mr. Grissom):

Q. All right. Now, I will ask you again; because the Reporter didn't get your answer a while ago. What business are you in?

A. I am an agent for Allstate Insurance Company.

Q. How do you operate?

A. I work out of the South Main Store.

Q. You mean South Main in Houston, Texas?

A. Yes, sir.

Q. How long have you worked for them?

A. Two and a half years.

Q. Now, state how that is done. Do you have a booth in the store?

A. Yes, sir.

Q. That you go into and see a prospect?

A. Well, we have a booth and go out and make calls to the general public, yes, sir.

Q. Now, since July of 1955, state whether or not you have had telephone calls; answered telephone calls into that booth at the South Main Store in Houston?

A. Yes, sir.

Q. With reference to All States Life Insurance Company?

A. We have—I have had numerous calls.

Q. You have had numerous calls. What was the nature of them; what did they want to know?

A. People inquiring about particularly stock in All States Life Insurance Company, wanted to know if they were a part of Sears and Roebuck.

Q. Did you have anybody call up and ask you if you were now selling life insurance?

A. Yes, sir, we have.

Q. Many or few?

A. There were numerous calls, particularly the last summer.

Q. Numerous calls. Have you ever had somebody purporting to sell All States Life Insurance stock call on you?

A. Yes, I encountered a representative selling stock for All States Life Insurance Company last summer. His name was Jim Miller.

Q. Where was that in Houston?

A. That was on the parking lot of the South Main Street Store, yes, sir.

Q. What was his information?

A. He attempted to sell me some stock in the company, and stated that although Allstate and All States were not the same company, they would probably merge in a few years time because of the mutual advertising.

Q. They were advertising each other?
A. Yes, sir.

Mr. Grissom:
You may have the witness.

The Court:
Any cross?

Mr. Carrington:
Yes, sir.

Cross Examination.

By Mr. Carrington:
Q. Mr. Chappell, are you familiar with any other businesses in Houston using the name "Allstate" other than your insurance company?
A. No, sir, I am not.
Q. Have you ever heard of the Allstate Window Cleaning Company?

Mr. Grissom:
Now, if Your Honor please, there may be this and other offers of similar name, to which we object as being irrelevant and immaterial unless it is shown how long it has been used, what they use it for, and the circumstances under which they use it; because if they are infringers—

The Court:
We don't argue our cases here.

Mr. Grissom:
Yes, I was trying to make my reasons clear.

The Court:
What is the question?

Mr. Carrington:
Well, I had hoped that I would elicit from the witness—

The Court:
What is it?

Mr. Carrington:
I had hoped to elicit from the witness his knowledge of other firms using the name "Allstate" in Houston.

The Court:
I don't know what you say, Mr. Carrington.

Mr. Carrington:
I had hoped to elicit from this witness an admission that he knew of many other concerns in Houston using the name "Allstate" as a part of their name in operating the various businesses there.

The Court:
Well, answer the question.

Mr. Grissom:
We except.
A. I know of none of them.

(By Mr. Carrington):
Q. All right. I will ask you about three.
A. All right.
Q. The Allstate Advertising Agency, you have never heard of it?

A. Yes, sir, I have heard of that company.

Q. The Allstate Drilling Company, have you ever heard of that?

A. Yes, sir.

Mr. Grissom:

We except to that answer as being irrelevant and immaterial.

(By Mr. Carrington):

Q. The Allstate Sewer and Septic Tank Service, have you ever heard of that?

A. No, sir.

Mr. Grissom:

We object to that as being irrelevant and immaterial.

(By Mr. Carrington):

Q. Now, the Allstate Advertising Agency had nothing to do with your Allstate business in the insurance business, did it?

A. As far as I know, I don't know, sir.

Re-Direct Examination.

By Mr. Grissom:

Q. State whether or not you would be in a position to know whether it did or not?

A. I certainly wouldn't.

Mr. Grissom:

All right. That is all.

The Court:
All right. Call your next witness.

Mr. Grissom:
Mr. Jack Weisner. Jack Weisner.

JACK WEISNER, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Were you here this morning at first and were sworn with the rest of the witnesses?

A. Yes, sir.

Q. What is your name, please, sir?

A. Jack Weisner.

Q. Speak loud enough for the Court and the rest of us to hear. What is your business or occupation?

A. I am the operating division manager of the Dallas regional branch of the Allstate Insurance Company.

Q. As that officer, or in that position, state whether or not you have anything to do with the telephone board, the supervision of it?

A. That falls under my supervision.

Q. How about the mail room, mail that is coming in?

A. That falls under my direct supervision.

Q. Yes. Now, how long have you held that position?

A. Since August 1, 1955.

Q. Well, beginning about the time you became the operating manager for Allstate, state whether or not

it came to your attention that there were telephone calls and letters coming to your office, Allstate Insurance Company, that were obviously intended for All States Life Insurance Company?

A. There were.

Q. Now, did you take steps to have records kept of the number of those calls as far as telephones were concerned, and the number of pieces of mail that came to your office, Allstate Insurance Company?

A. I did.

Q. You did. Do you have a record of the telephone calls?

A. Yes, sir.

Q. State whether or not they were dept under your supervision?

A. Yes, sir.

Q. Have you got them with you?

A. Yes, sir.

Q. Were they correctly kept?

A. Yes, sir.

Q. Are they a part of the business records of your office?

A. Yes, sir.

Q. Allstate Insurance Company? May I have that list?

Mr. Grissom:

I will ask the Reporter to mark this Plaintiffs' Exhibit consisting of five pages, Plaintiffs' Exhibit whatever it is.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 26 for identification.)

Mr. Grissom:

I show it to Mr. Newman or Mr. Carrington, the attorneys for the Defendant.

(By Mr. Grissom):

Q. Now, this Exhibit, Plaintiffs' 26, appears also to cover the pieces of mail received.

A. Yes, sir.

Q. This is the entire tabulation?

A. Yes, sir.

Q. Of the records kept under your supervision, and from the telephone board and the mail room?

A. Yes, sir.

Q. Now, will you—

Mr. Grissom:

We offer Plaintiffs' Exhibit No. 26 in evidence, and it shows "Recorded telephone calls received for All States Life:

August 4—Long distance call from San Antonio for a Mr. Biggers.

August 5—Call from Wall Street Journal.

August 5—Call from Jim Davis, stockbroker inquiring about All States Life Insurance Company.

August 5—Request for prospectus.

August 8—Call from individual wanting a Mr. Starr.

August 8—Inquiry from individual wanting to know if there was connection between All States Life and Allstate Insurance Company. Telephone No. FO9-6467.

August 9—Call from D. D. Sherman.

August 12—Call for Mr. Biggers.

August 15—Inquiry.

August 16—Individual wanted Mr. Biggers called from Waxahachie.

August 18—Local call for Mr. Biggers.

August 22—Local call for Doak Walker.

August 22—Local call for Doak Walker.

August 22—Local call concerning interest in stock.

August 22—Local call for Mr. Biggers."

And the whole list, shall I just offer it in evidence, or shall I read it to the Court? But that is the way it runs.

The Court:
I see.

(By Mr. Grissom):
Q. Now, tell the Court whether or not those calls and pieces of mail have been on the gradual increase during the past few months, or not?
A. The mail has been on a gradual increase; there has been no increase in the telephone calls.
Q. State whether or not it is about the same?
A. I doubt that the—the calls are not as many.
Q. Not quite as many now?

A. No, sir.

Q. But anyway, they are all set down here?

A. Yes, sir.

Q. For the period of time covered?

A. Yes, sir.

Q. If I understand it, you didn't do it every day; but would take a week or ten days or a month, and stop a while, and see what would happen?

A. That is right, sir.

Q. That is right. Now, state whether or not there was received in your office, and in the mail room, a letter from Mr. Gibson, a vice president of the Republic National Bank, addressed to Mr. Brazier, your manager, inquiring about doing their finance business as a life company?

A. There was.

Q. Do you have that letter?

A. Yes, sir.

Mr. Grissom:

I ask the Reporter to mark this appropriately as Plaintiffs' Exhibit.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 27 for identification.)

Mr. Grissom:

Would you like to see it?

(By Mr. Grissom):

Q. Now, I show you Plaintiffs' Exhibit 27. Is that the letter that you spoke of?

A. Yes, sir.

Q. All right. Now, Mr. R. C. Brazier is what?

A. He is the resident manager.

Q. Yes. This letter is on the letterhead of Republic National Bank of Dallas, Dallas, 22, Texas, September 23, 1955. "Mr. R. C. Brazier, All States Life Ins. Co., Corrigan Tower, Pacific and St. Paul, Dallas, Texas.

Dear Mr. Brazier:

The Time Credit Department of Republic National Bank is now offering to finance life insurance premiums for your customers.

We have available a new folder, copy of which is enclosed, outlining the plan. These folders will be furnished to underwriters and brokers for distribution to their clients. We have provided a space to imprint the name of the person or company distributing the folder.

When life insurance premiums are financed under the Republic Plan:

Underwriters and brokers collect the full annual commission immediately.

Underwriters and brokers are able to create new business and increase present volume by suggesting to clients that they finance their insurance premiums with Republic.

Prospects can purchase insurance when they need it because no down payment is required.

The first payment is due one month from the date application is approved.

Why not recommend Republic's Time Credit Life Insurance Premium Finance Plan?

Sincerely, John L. Gibson, Vice President."

Now, state whether or not you received any mail today addressed to All States Life?

A. Yes, sir.

Q. May I see it?

A. I do not have it.

Q. Is it here?

A. I believe one of the gentlemen outside has it.

Mr. Grissom:

Oh, well, will you go get it.

(By Mr. Grissom):

Q. Now, did you receive any telegrams?

A. Yes, sir.

Q. All right. Now, then, tell the Court whether or not there was received in your office addressed to Allstate Insurance Company the bank statement from the Republic National Bank of Dallas for All States Insurance Company?

A. We received in our office the bank statement of the All States Life Insurance Company.

Q. Yes, sir. About when was that received?

A. Some time in the week prior to July 20, 1955.

Q. Now, what did you do with it?

A. We forwarded it to them.

Q. You forwarded it to them?

A. Yes, sir.

Q. All right. Now, then, state whether or not this package here was received in your office this morning through the United States mail?

A. One of my mail clerks brought this to me as received this morning.

Q. All right. How is it addressed?

A. Allstate Insurance Company, 212 N. St. Paul St., Dallas, Texas.

Q. Is that the address of the regional offices of Allstate Insurance Company?

A. Yes, sir.

Q. Well, this doesn't belong to you?

A. No, sir.

Mr. Grissom:
I would rather not offer it in evidence, unless counsel would insist on it.

The Court:
All right. Anything else?

(By Mr. Grissom):
Q. What is this, would you say?
A. It is—I take it to be a urinalysis specimen.
Q. Yes.

Mr. Grissom:
That is all. Thank you very much.

The Court:
Any cross, gentlemen?

Cross Examination.

By Mr. Carrington:
Q. Of course, the total number of items and corresponndence and phone calls is a very large number at the office that you are talking about, and these that you have listed in this Exhibit is only a small percentage of the whole, isn't that clearly right?
A. Sir, they are the total—during the specified periods that we kept records.
Q. I am asking about all, not just these about All States Life Insurance Company; I mean all of your calls, telephone and mail, are very much larger, of course?
A. Yes, sir, if you mean—
Q. And this is only a very small percentage of that whole?
A. Of the total received in our office?

Q. Yes, sir.

A. Yes, sir, very small percentage.

Q. Yes, sir. One percent?

A. Well, I couldn't guess, sir; it is a small percentage, though.

Q. Okay. Now, the number of errors that occur in the handling of mail occurs all of the time with reference to other addressees than All States Life Insurance Company, doesn't it?

A. Occasionally, yes, sir.

Q. And phone calls?

A. Very few, sir.

Q. As a matter of fact, the City Directory for the telephone company was not published in 1955 until November, you know that?

A. That is right, sir.

Q. So that its name, the All States Life Insurance Company, was not to be found in the City Directory until that time as far as the public distributed directories was concerned?

A. Well, I believe that is correct, sir. I know that a new directory came out in November.

The Court:

All right.

Re-Direct Examination.

By Mr. Grissom:

Q. Mr. Weisner, where have lived all of your life?

A. I was born in Cherokee County, Texas, sir.

Q. Yes, sir.

A. And lived in Cherokee County until 1952 when I moved to Dallas.

Q. Now, in your acquaintances, your associations, did you become acquainted with the name "Allstate";

I mean, did you become acquainted with the name "Allstate"?

A. Yes, sir.

Q. State whether or not it was a matter of discussion among your acquaintances?

A. Well, certainly, yes, sir.

Q. Yes, sir. Well, what did it mean to you and the people that you associated with?

Mr. Carrington:

That calls for hearsay, as I understand the question.

The Court:

Let him confine his knowledge to himself.

(By Mr. Grissom):

Q. What does it mean to you?

A. It meant Sears and Roebuck, sir.

Q. All right.

The Court:

All right. Call your next witness.

Mr. Grissom:

That is all. I want Mr. Robert K. Foster.

I believe you have not been sworn, is that right?

Mr. Robert K. Foster:

No, sir.

Mr. Grissom:

Will you raise your hand and be sworn?

ROBERT K. FOSTER, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Will you have a seat there, Mr. Foster. Now, Mr. Foster, I am going to ask you to speak loudly so we can all hear you. What is your name, please, sir?

A. Robert K. Foster.

Q. Where do you live?

A. 4418 Normandy in Dallas.

Q. How long have you lived in Dallas?

A. Since 1946.

Q. What is your business?

A. I am in the securities business.

Q. What concern are you with?

A. Merrill, Lynch, Pierce, Fenner & Beane

Q. How long have you been with them?

A. Since December, 1950.

Q. What position do you hold with them?

A. I am in charge of the unlisted securities department.

Q. Since—well, what is an unlisted security, just briefly?

A. It is a stock that is not listed on any National Exchange like the New York Stock Exchange or the American Stock Exchange, or the Midwest Stock Exchange.

Q. Have you determined whether or not All States Life Insurance Company is listed on any stock exchange?

A. I have determined that it is not listed.

Q. Have you determined whether or not it is listed on the over-the-counter market?

A. It would be treated in the over-the-counter market if it were traded, yes, sir.

Q. Have you, in your position as—with Fenner & Beane, had inquiries, either in person or by telephone, with reference to All States Life Insurance Company stock?

A. Yes, sir, I have.

Q. What was the nature of that?

A. Primarily whether or not I knew of a market for the stock.

Q. What response—what did you tell them?

A. That I did not have one, sir.

Mr. Carrington:

If the Court please, I don't see the materiality of this, and especially as to whether the stock sold at one price or another, or how it is sold. There isn't any transaction of which this Defendant is a party.

Mr. Grissom:

That isn't what I am trying to prove; that isn't what I am trying to prove, Paul; it is something else.

Mr. Carrington:

Well, the telephone discussion between this unnamed person and this witness.

The Court:

Go ahead.

(By Mr. Grissom):

Q. Mr. Foster, did you tell these people there wasn't any market for All States Life Insurance Company?

A. I just told them that I knew of no market for it.

Q. What did they say?

The Court:
No.

A. That was the end of it.

The Court:
No, no, let's not go into it.
A. That was the end of it.

The Court:
That was the end of it?

The Witness:
Yes, sir.

(By Mr. Grissom):
Q. State whether or not you had any of them ask you whether or not All States Life Insurance Company was a Sears, Roebuck & Company—
A. Yes, I have been asked that; yes, sir.
Q. Frequently or infrequently?
A. I would say infrequently.
Q. But some?
A. But it has been—yes, sir.

The Court:
Any cross?

Mr. Grissom:
All right; you may have the witness

Cross Examination.

By Mr. Newman:
Q. Mr. Foster, would you please state whether or not it is customary for your company to deal in the

stock of a company when the new issue is still pending by that company?

A. Well, that is an awfully difficult thing to answer; because there are so many different ways stocks are sold to the public, or offered to the public, let's put it that way.

Q. Well, as a general rule, unless you are participating in the underwriting, do you normally sell the stock of the new issue?

A. No, sir, I wouldn't say we do.

Q. Do you sell here locally stock of Atlantic Insurance Company, and stock of Atlantic Life Insurance Company?

A. No, sir.

Q. Do you sell here locally stock of Connecticut Fire Insurance Company, and Connecticut Indemnity Company?

A. No, sir.

Q. Do you sell here locally Employers Casualty Company stock, and Employers Fire Insurance Company stock?

A. We have traded in Employers Casualty.

Q. Have you done any trading in Great Southern Fire and Casualty, and Great Southern Life?

A. Great Southern Life.

Q. Or Republic National, and Republic National Life Insurance Company?

A. Yes, sir, I have traded in those.

The Court:

All right. Call your next witness.

Mr. Grissom:

I want Mr. Jacques.

Your name, how do you pronounce your name? Mr. Jaques, you haven't been sworn.

JAMES F. JACQUES, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. Mr. Jacques, will you speak out loudly so the Court and the rest of us may hear. Will you speak out. What is your name?

A. James F. Jacques. That is (spelling) J-a-c-q-u-e-s.

Q. Where do you live?

A. Dallas, Texas, 7014 Meadowlake.

Q. How long have you lived in Dallas?

A. Twenty-two years.

Q. What is your business?

A. I am vice president of First Southwest Company, Investment Bankers.

Q. State whether or not they deal in securities?

A. We do deal in securtiies.

Q. Do you deal in unlisted securities?

A. Unlisted securities, as well as listed securities.

Q. Listed securities. Are you the largest house in town dealing in that?

A. We are the largest unlisted dealers from the standpoint of capital.

Q. Is Merrill, Lynch a big concern?

A. Very large.

Q. Now, Mr. Jacques, what is your position besides just being vice president, what do you do?

A. I am in charge of the trading department.

Q. What does that mean, buying and selling?

A. We buy and sell securities for our own account, as well as for the accounts of others.

Q. Now, Mr. Jacques, state whether or not you ever heard of All States Life Insurance Company?

A. I have.

Q. In what—how did you come to find out about it?

A. Well, through advertisements, as well as through people calling up wanting to ascertain if there is a market for the securities.

Q. Well, what did you tell them about whether there was or was not a market?

A. To the best of my knowledge, I told them I did not believe that a market existed for the securities, other than with the company.

Q. State whether or not people inquired of you in your position as to whether or not All States Life Insurance Company was a Sears, Roebuck organization?

A. I had one instance where a woman called up and asked for a market on All States. I told her that I did not believe one existed other than the company, and she couldn't understand it, being run by Sears.

Q. All right.

Mr. Grissom:

You may have the witness.

The Court:

All right. Any cross?

Cross Examination.

By Mr. Newman:

Q. Mr. Jacques—

A. Yes, sir.

Q. —how many telephone calls did you receive concerning All States Life Insurance Company, please, sir?

A. That would be impossible for me to answer; because there are six people in my organization taking calls.

Q. Could you approximate the number?

A. I have received maybe five or six personally.

Q. And is it correct that out of that only one inquired as to whether there was any connection with Sears, Roebuck & Company?

A. Right, specifically.

Q. Do you normally receive inquiries as to whether one insurance company is affiliated with it, or another insurance company?

A. Well, that is hard to answer.

Q. Do you handle stock here of insurance companies?

A. We do.

Q. Do you handle Gulf Insurance?

A. Yes, sir.

Q. Do you handle Employers Casualty?

A. Yes, sir.

Q. Great Southern?

A. Right.

Q. Do you receive any inquiries as to the particular identity of those companies, whether they are connected with companies of similar names?

A. I believe in addition to the Republic Insurance Company, there is a Republic Indemnity.

Q. With respect to your investigation of All States Life Insurance Company, did you find that it was engaged in a new issue of stock?

A. I made no investigation; I simply tried to find a market, which I was unable to do.

Q. Where did you attempt to find a market?

A. Among other dealers. There is one firm that handles that type of securities exclusively. I at-

tempted to find a market with them, and I couldn't find one.

Q. Were those exclusively National Association of Securities Dealers members?

A. Yes.

Q. What do you mean by "that type of security", Mr. Jacques?

A. Well, we have so-called national issues, registered issues, and we have what we term promotional issues, and we keep a market in all of the national issues; we make no attempt to keep a market in the smaller, lesser issues.

Q. State whether or not this would be a promotional issue?

A. In my opinion, it would be.

Q. All right.

The Court:

All right.

Mr. Grisom:

Mr. Nye, please. Thank you very much. Mr. Paul Nye.

Have you been sworn?

Mr. Paul Nye:

Yes, sir.

PAUL NYE, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:

Q. What is your name, please, sir?

A. Paul Nye.

Q. Will you please talk loudly enough so the Court and the rest of us can hear.

A. Yes, sir.

Q. Where do you live, Mr. Nye?

A. Corpus Christi, Texas.

Q. What is your business or profession?

A. I am an attorney.

Q. State whether or not you have ever had any connection with Allstate Insurance Company?

A. Yes, I represented Allstate on subrogation and one or two defense matters there locally.

Q. In Corpus Christi?

A. Yes, sir.

Q. Now, since July 1 of 1955, has the existence of All States Life Insurance Company come to your attention?

A. Yes, sir.

Q. In what way?

A. A salesman called at my office for the purpose of selling some stock, and he came to my private office, and I discussed the matter with him for, oh, about five or ten minutes, and thinking that Allstate had been expanding, and especially in Corpus Christi, I was interested in buying some stock, and my partner, Joe Kahn, and I had talked about it on a previous occasion, and so I took him on in to Joe's office, and he and I, and I introduced this man to Joe, and we discussed the matter about buying some stock with this man.

Q. State whether or not he ever told you that All States Life Insurance Company was not connected with Allstate Insurance Company, or Sears, Roebuck & Company?

A. No, he didn't until the last bit. Prior to that, he was showing us some cellophane packages in a

booklet of officers and directors and people in the company.

The Court:
Speak out so he can hear you.

A. First, he was showing us a cellophane book, and it had pictures of officers and directors, and I believe it had numbers in there concerning the capital structure of the organization, and to me, I thought it was Allstate Insurance Company; I mean, it had a picture of a map, and so forth, and so I took it in, and took the man and his book, and so forth, into Joe, and we discussed the matter there between us, and the salesman was still talking about this, and finally I said something about, "Well, there has been quite a death rate among life insurance companies in Texas; but Allstate should be pretty good." And then Joe, my partner, spoke up and said, "Well, if it is connected with Sears, then I know it is good." And then this man, at that point, he said that "We are not connected with Sears." And I said, "Well, it is the same name, isn't it?" And he said, 'No, it is All States; we plan to sell in all of the States, and that is where we got our name."

The Court:
All right.

Mr. Grissom:
Will you mark this Plaintiffs' Exhibit 28?

(The instrument referred to was here marked Plaintiffs' Exhibit No. 28 for identification.)

(By Mr. Grissom):

Q. I hand you Plaintiffs' Exhibit 28 and ask you whether or not that is the type of map with "Allstate" on it that you saw in the literature which this stock salesman had?

A. I believe that is very familiar.

Q. Very familiar?

A. Looks like very close to what he had.

Mr. Grissom:

I offer Plaintiffs' Exhibit 28 in evidence. You may have the witness.

The Court:

Any cross?

Mr. Newman:

If the Court please.

Cross Examination.

By Mr. Newman:

Q. Mr. Nye, did the salesman show you any printed literature or advertising?

A. Yes, I believe in this portfolio, with the cellophane pages on it, it had the company's name with this map.

Q. Now, I believe you stated that you are a practicing attorney?

A. Yes.

Q. Are you familiar with the word "prospectus" as used in connection with the sales of stock?

A. Yes.

Q. You know what a prospectus is?

A. Yes.

Q. Did they show you a prospectus?

A. I believe that was among them; I wouldn't be absolutely positive.

Q. I would like to ask you whether or not that is a copy of the prospectus that was shown you, Mr. Nye?

A. I wouldn't just swear that that was; but I think that this part here was on some of the material that he showed.

Q. Does it look familiar to you, sir?

A. Well, I wouldn't just swear that it was the same item that he showed me; but I do remember that some of the items, or some of the pages in this booklet, had this symbol on there.

Q. You notice that has 5630 Dyer Street, Dallas, Texas?

A. Yes, sir.

Q. And the address of the company?

A. Yes, sir.

Q. Do you know the address of Allstate Insurance Company, Plaintiff in this cause?

A. Well, my connections have been with Jack Walding, here in Dallas; I didn't particularly know the exact address.

Q. You have represented the company in a number of pieces of litigation, have you, sir?

A. Prior to that time, our firm has represented them on occasional subrogation, and one or two defense matters.

The Court:

The question was, "Have you represented them?"

The Witness:

Yes, sir.

The Court:

Well, answer the question.

(By Mr. Newman):

Q. In so doing, didn't you find it necessary to allege in pleadings that Allstate Insurance Company was a Chicago corporation, or Illinois corporation, with home offices in Skokie, Illinois?

A. No, sir, not up to that point.

Q. You didn't allege that in any of the pleadings in which you represented them?

A. No, sir.

Q. Did you notice in the literature which the salesman handed you the pictures and the names of the officers of the company that he showed you?

A. I noticed the ones that he showed me, yes.

Q. Are those the ones that he showed you?

A. Well, they are not familiar; they weren't familiar to me at the time.

Q. Did you recognize any of those gentlemen as prominent, outstanding Texas citizens?

A. No, sir.

Q. You are not familiar with Colonel Alvin Mansfield Owsley?

A. No, sir.

Q. You are not familiar with Mr. Fred Korth?

A. No, sir.

Q. Did the stock salesman hand you a stock purchase form?

A. No, we didn't get that far.

Q. Did you buy any of the stock?

A. No.

Q. Did he represent to you that the company was affiliated with Sears, Roebuck & Company and Allstate Insurance Company?

A. No, but he knew we thought he was representing Allstate.

Q. How did he know what you thought, Mr. Nye?

A. Because we had been talking about the soundness of the company, and the fact we were representing it.

Q. Didn't this prospectus state on its face that it was for sale only to the citizens of the State of Texas?

A. I believe it does.

Mr. Newman:

I believe that is all. Mark that Defendant's Exhibit No. 2.

(The instrument referred to was here marked Defendant's Exhibit No. 2 for identification.)

The Court:

All right. Call your next witness.

Mr. Grisom:

Is it all right to excuse the witness?

The Court:

Yes. Excuse any of your witnesses; let the other side know about it, of course.

ROLAND CARMICHAEL, being first duly sworn, testified on his oath as follows:

Direct Examination

By Mr. Grissom:

Q. Have you been sworn, Mr. Carmichael?

A. Yes, sir, I have

Q. Will you please have a seat, Mr. Carmichael. Please speak loudly so the Court and the rest of us may hear.

A. All right, sir.

Q. And what is your name, please, sir?

A. Roland G Carmichael, Jr.

Q. Where do you live?

A. 627 Ryan Road, Dallas, Texas.

Q. How old are you?

A. Thirty-four.

Q. What business are you engaged in?

A. I am an agent for the Allstate Insurance Company.

Q. How long have you been engaged in such business?

A. It will be eight years in August.

Q. How do you operate?

A. We have sales locations located in the Sears store, have two booths at the particular store where I am located. We work there a day and a half or two days a week; the rest of the time, we are outside.

Q. Are you a direct employee of Allstate Insurance Company?

A. Yes, sir, I am.

Q. You operate out of a Sears, Roebuck & Company store?

A. Yes, sir.

Q. Now, since July 1, 1955, have you heard of a company known as All States Life Insurance Company?

A. Yes, sir.

Q. How did it come to your attention?

A. We had telephone calls, people calling in to our sales location asking if it was the same company, that were now in the life insurance business.

Q. Were there many or few of those calls?

A. I kept no tabulated record; I would say a minimum of twenty, probably.

Q. Well, there were that many?

A. Yes, sir.

Q. And were they all about the same thing?

A. Yes, sir.

Q. Now, in your contacts outside of the booth, and the telephone, state whether or not you had any personal inquiries from members of the public about the relationship of All States Life Insurance Company, and Sears, Roebuck and Allstate Insurance Company.

A. Yes, sir, in this manner: I heard one or two people remark that they were going to buy stock in the company that I worked for, and I immediately told them it was two entirely different companies.

Q. Did you hear many such remarks, or just some such remarks?

A. Oh, I don't know just how many.

Q. Yes. Now, in your—have you lived in Dallas very long?

A. All of my life.

Q. All of your life. What has the name "Allstate" meant to you?

A. Sears, Roebuck.

Q. Yes, sir.

Mr. Grissom:
You may have the witness.

The Court:
Any cross?

Mr. Carrington:
No questions.

The Court:
All right. Call your next witness.

Mr. Grissom:
Now, if Your Honor please, I would like to offer at this time a portion of the deposition of Mr. B. F. Biggers, taken at the office of his attorneys on May 25, 1956. The examination was conducted by me, and he was called adversely, since he is president of the company. Beginning on page 3:
"Question: What is your full name, please?
Answer: Bevie Franklin Biggers."

The Court:
Is he here?

Mr. Grissom:
Yes, sir.

The Court:
Well, you can't use the deposition if he is here.

Mr. Grissom:
Well, I thought it might--for just one thing—I thought they might not object to it; I just want to prove one thing, and it is here; but I can call him and ask him.

The Court:
Yes. You have to do that under the Rules.

Mr. Grissom:
Yes, sir.

The Court:
You can use it only for impeaching.

Mr. Grissom:
Mr. Biggers, will you please take the stand. I am calling Mr. Biggers only on one point under the adverse party Rule.

B. F. BIGGERS, being first duly sworn, testified on his oath as follows:

Direct Examination.

By Mr. Grissom:
Q. Mr. Biggers, you were sworn a while ago?

The Court:
Bake, is that it?

The Witness:
Biggers, (Spelling) B-i-g-g-e-r-s.

The Court:
Mr. Biggers. Yes.

(By Mr. Grissom):
Q. Your name is B. F. Biggers?
A. B. F. Biggers.
Q. You are president of the All States Life Insurance Company?
A. Of Dallas, Texas, yes, sir.
Q. And you have been since it was incorporated?
A. That is correct.

Q. Now, state how many shares of stock were authorized in All States Life Insurance Company.

A. You mean to be sold to the public?

Q. No, I am talking about what was authorized. Was it three million shares?

A. Three million shares, that is correct.

Q. Three million shares?

A. That is right.

Q. Now, what was it capitalized for?

A. No par, $250,000.00.

Q. Did you have any surplus?

A. Yes, sir.

Q. $50,000.00 surplus?

A. Yes, sir.

Q. Now, where did the $300,000.00 come from?

Mr. Newman:

May it please the Court, we think this question is irrelevant and immaterial to this lawsuit; this is unfair competition that they are alleging, and what he paid for this stock, how many shares he had, where they were incorporated, and so forth, we think is irrelevant to this suit.

The Court:

I don't see it is very material; but I think I will let him go ahead.

Mr. Grissom:

All right.

(By Mr. Grissom):

Q. Where did you get the $300,000?

A. Where did I get it?

Q. Yes.

A. Well—

Q. Didn't you testify that you got it out of some trusts which you operated for your children?

A. That is correct.

Q. All right. And how many shares of stock were issued to you in those trusts for that $300,000.00?

A. To the trusts, not to me.

Q. All right. How many?

A. One million and a half.

Q. One million and a half. That was one half of the total authorized capital stock?

A. That is correct.

Q. That is right. And that is twenty cents a share, isn't it?

A. Well, it figures about that.

Q. Yes, sir. Now, then, you undertook to offer to the public a million shares at $5.25 a share, or more?

A. That is correct, $5.00 or more.

Q. What?

A. $5.00 or more.

Q. Well, you tried $7.00 one time, didn't you?

A. We sold it at $5.00.

Q. At first, and you tried to go up?

A. Did go up.

Q. You did go up, and you went back to $5.00?

A. $5.25, that was the price set for the state.

Q. All right. Priced by the state. So the million shares which was two-fifths of the total amount of shares sold brought $5.00 a share, is that right, $5.25 a share?

A. Well, whenever it is sold, yes.

Q. Well, some of it is on subscription?

A. Well, some of it is being sold now.

Q. Now, that is right. But anyway, the purpose of the company is to sell a million shares at $5.25 a share?

A. Roughly, yes, sir.

Q. The other million and a half shares, you paid for and paid a total of $300,000.00 for it?

A. That is right.

Q. If its stock is paid out, a million shares, not counting the commission for salesmen, the million shares are paid out, how much money would it produce?

A. Based on what you say, I would say five and a quarter million dollars.

Q. All right. What commission did you pay?

A. Twenty percent.

Q. Now, you had a commission—you had a contract with dealers?

A. That is right.

Q. To sell that stock?

A. That is correct.

Q. And those contracts provided that those dealers wouldn't offer, and wouldn't use, any advertising that wasn't either furnished by the company or approved by All States Life Insurance Company, that is correct, isn't it?

A. I think that is in the contract.

Q. You will recall that—

A. The contract would speak for itself better than me.

Q. All right.

The Court:

All right.

Mr. Grissom:

Will you mark that Plaintiffs' Exhibit whatever it is.

(The instrument referred to was here marked Plaintiffs' Exhibit No. 29 for identification.)

(By Mr. Grissom):

Q. I hand you Plaintiffs' Exhibit 29, which is attached to your original deposition. Is that a copy of the dealer contract?

A. That is correct.

Q. That is correct. Now, it provides in here, doesn't it, No. 3, it provides "Dealer shall use no advertising, circular, prospectus or sales material with respect to securities sold hereunder unless the same has been furnished or approved by Company."

A. That is correct.

Q. That is All States Life Insurance Company?

A. That is what it says in the contract.

Q. "All sales material furnished Dealer by Company shall be free of charge to Dealer."

A. That last line is not correct in some of the contracts.

Q. Well, it is in this one?

A. Yes, sir.

Q. Which was used by the company?

A. Yes, sir.

The Court:

All right. Any cross?

Mr. Grissom:

You may have the witness.

Mr. Newman:

Mark this Defendant's 3, please.

(The instrument referred to was here marked Defendant's Exhibit No. 3 for identification.)

Cross Examination.

By Mr. Newman:

Q. Mr. Biggers, I will hand you what has been marked as Defendant's Exhibit No. 3, and ask you to please identify it, please, sir.

A. It is permit issued by the Insurance Department of the State of Texas, authorizing us to sell our common stock at $5.25 a share.

Mr. Newman:

If the Court please, we plan to put this witness on on direct, and we would like to reserve the right to question him further at that time.

The Court:

Call your next witness.

Mr. Grissom:

We would like at this time to put on portions of the deposition of Mr. Henr S. Moser, taken in Chicago by the Defendant on June 5, 1956. And Mr. Moser is not present.

The Court:

This man is not present?

Mr. Grissom:

He is not present.

The Court:

Deposition of who?

Mr. Grissom:

Mr. Henry S. Moser, (spelling) M-o-s-e-r, Moser. It is page 3. It was taken under the usual stipulation. Mr. Henry S. Moser, beginning on page 3, "having been first duly sworn, deposeth and saith as follows:

Examination by Mr. Newman. Question: Please state your name. Answer: Henry S. Moser, M-o-s-e-r. Question: And, your profession? Answer: I am a lawyer. Question: And your age? Answer: Fifty-five. Question: By whom are you employed please, sir? Answer: Allstate Insurance Company. Question: And—? Answer: And, Allstate Fire Insurance Company. Question: And how many years have you been so employed? Answer: I have been employed in my present capacity since October, 1953. Prior to that time I represented them as Counsel, but was also engaged in a very minor extent in the general practice of law. Question: And what is your capacity with Allstate Insurance Company? Answer: Presently, I am Vice-President Secretary, and General Counsel. Question: And a Director? Answer: And a Director. Question: And what is your capacity with Allstate Fire Insurance Company? Answer: Same offices. Question: Are the Officers and Directors for each of those two Companies the same? Answer: Yes, sir, they are Common Officers and Directors, sir."

Mr. Grissom:

Skipping now to page 7.

"Question: What is the relation between Allstate Insurance Company and Allstate Fire Insurance Company? Answer: Allstate Fire Insurance Company is a wholly owned subsidiary. Question: What is the re-

lation to Allstate Insurance Company to Sears Roebuck and Company? Answer: That is a wholly owned subsidiary of Sears Roebuck and Company, and in each instance each of the Directors holds in his name, qualified shares, in accordance to the Statute."

"Question: When was Allstate Insurance Company Incorporated? Answer: April 17, 1931."

"Question: Do you have a list of the advertising expenditures—

Mr. Carrington:

I don't find that.

Mr. Grissom:

I will give you the pages. That is 71, and they are marked.

"Question: Do you have a list of the advertising expenditures of Allstate Insurance Company in the State of Texas, and the totals of the expenditures of advertising there? Answer: Yes, I do, Mr. Grissom. Question: What are they? Answer: The Allstate Insurance Company and the Allstate Fire Insurance Company, I think most are of Allstate Insurance Company from 1931 to 1955, has spent in advertising, twelve million, nationwide, twelve million, four hundred and sixty four thousand three hundred and thirty-seven dollars. Of that sum by far the largest amounts were incurred of course in the late years.

"In 1955, the figure ran in excess of three million seven hundred thousand dollars; in 1954, in excess of two million and the same figure in 1953; and in 1952 a little less than two million dollars for the State of Texas alone.

"Our records go back I think from 1948, and we spent in Texas, in advertising the name of Allstate Insurance Company and Allstate Fire Insurance Company alone, I am sure in excess of four hundred and fifty thousand dollars. In '55 we spent in Texas alone in excess of a hundred and seventy-four thousand dollars.

"And in the first three months of 1956, we spent over forty-seven thousand dollars in the State of Texas, which is at the rate of pretty near two hundred thousand dollars a year for this year. Question: Do you have a list of your sales locations in the State of Texas? Answer: Yes, sir, we have sales locations. Fifty-four sales locations in the State of Texas divided among forty different Cities and Communities. Question: Do you know how many employees of Sears of Allstate Insurance Company are active in Texas? Answer: At the end of 1955 we had ten thousand eight hundred and eighty-one employees; five hundred fifty-three of those were employed in the State of Texas where we have maintained two Branch Offices over a period of years. Question: State whether or not most of these Agents operate out of the Sears Roebuck and Company Stores? Answer: I gave my figure of my estimate of that of approximately 75% of our agents. Maybe a little higher than that, now. Question: How many sales offices does the Allstate Companies have in Texas? Answer: Well, we have fifty-four sales locations in forty Cities. Question: Do you have the figures on how many policy holders you have in Texas? Answer: At the end of 1955, we had three million, nationwide, we had three million six hundred and twenty thousand, two hundred and fifty-three policies in force, of which a hundred and sixty-six thousand seven hundred and fifty-nine were Texas Policies.

"At the end of 1955, we were the largest writer of automobile insurance premiums in the world and at the end of 1954, I know we were the largest writers of such premiums in the State of Texas. I haven't seen the figures of 1955 for Texas, but I am sure that we retained our relative position in that State at the end of 1955. Question: What was the total premium income of the Allstate Insurance Company in the year 1955? Answer: Two hundred fifty-two million, one hundred twenty-six thousand, one hundred sixty dollars. That is the consolidated figure of which includes the premiums that we ceded to the Allstate Fire Insurance Company. Of that figure we collected in premiums from residence of the State of Texas for that year, eleven million four hundred sixty-one thousand, six hundred forty-four dollars. Question: Do you have any figures on the advertising dollar volumewise throughout the nation for 1955? Answer: Yes, sir. 1955, I gave you that figure. It was three million, seven hundred fifty-nine thousand, six hundred and forty dollars for advertising country-wide. Question: All right. Now, what part of that, did you give it to me? Answer: Yes. Question: I don't want to duplicate your testimony and his record. Did you get these figures a while ago? Answer: I have. This is the list, sir."

Mr. Grissom:

And, the list was offered as an Exhibit No. 46 to Mr. Moser's deposition, which we offer in evidence, and we will get it from the filed deposition in a minute. On 79, now, at the bottom of the page:

"Question: Mr. Moser, state whether or not the Allstate Insurance Company and Allstate Fire Insurance

Company use the trade name, "Allstate", with the knowledge and consent of Sears Roebuck and Company? Answer: Both, with their knowledge and their consent and their blessing.

"Mr. Grissom: I will ask the reporter to mark these two as numbers 49 and 50 for identification, and ask you what that is? Answer: This is a pamphlet that we prepared for us in the State of Texas, in connection with the adoption of their safety responsibility law, which began effective January 1, 1952. Question: Now, do you know whether copies of this were handed out to the Public down in Texas, and was that a part of the advertisements? Answer: Well, they were prepared for that purpose and I know they were distributed very widely, and although I can't give you the exact figures, I would say that they are probably in excess of a million copies of those distributed to the citizens of the State of Texas over the period of time. Question: You will note that this pamphlet of papers advertising item carries the emblem of the eagle and the map of the United States, is that correct?"

Mr. Grissom:
That has already been offered into evidence.

The Court:
All right.

Mr. Grissom:
We go now to page 87. Now, the question near the middle of the page.

"Question: Mr. Moser, state whether or not your office—you as joint counsel for the Allstate Insurance

Company and Allstate Fire Insurance Companies have been active in protecting the property on its property rights of the company in the use of the name "Allstate Insurance Company" and the word "Allstate"? Answer: We have, Mr. Grissom, to the extent that it is practical and possible to do so. Question: State whether or not that work is still in progress, sir? Answer: Up until today, it is sir. Question: State whether or not it is true that that is a continuous process? Answer: That is exactly right. And I think it must be apparent that were we to institute an action with every trivial action, we would have no time to do an insurance business. We try and do everything we can in that score against all alleged infringers that it's possible to do and still continue the operation of our business. We attempt to proceed against what we deem the most flagrant of infringements and the most flagrant violators. That may perhaps explain the inquiry directed to me on direct examination as to why I don't or didn't proceed against every Turkish Bath that had the name, "Allstate". We thought the All States Life Insurance Company was a much more flagrant case than an instance where somebody was running a massage parlor or perhaps a place called the "All States Massage Parlor". Question: Now state whether or not the name, "Allstate" has more definite meaning in the minds of the public now than it did back in 1931? Answer: I don't think there is much or any question about it. I think with the growth of both, our Company and our Parent Organization, with expenditures of millions of dollars that we have expended through the nature of advertising with millions upon millions of circulars bearing our name, with the three million six hundred thousand customers presently upon our books alone,

to say nothing with the ones that do business with our Parent Company, I am convinced that the name "Allstate" in the minds of the very large majority of public has become synonymous with Sears. I get that through my travels throughout the Country. And of course that size did not exist in 1931 and 1932."

The Court:
Are you about through?

Mr. Grissom:
That is all of that deposition.

The Court:
We will take a recess until two thirty, Marshall.

(Recess had.)

The Court:
All right, gentlemen, call your next witness.

Mr. Newman:
May it please the Court, the Defendant has some cross examination testimony concerning the last witness.

The Court:
All right.

Mr. Newman:
Your Honor, the last witness, his testimony was given by oral deposition.

The Court:
Yes. I remember.

Mr. Newman:

And the Defendant would like to read just a few of the answers to a few of the questions.

The Court:

All right.

Mr. Newman:

On page 23 of the deposition of Henry S. Moser.

"Question: Is it true, that you generally now identify your Company as, 'Founded by Sears, Roebuck and Company?'

"Answer: Yes, we generally say, 'Founded by', and make it perfectly clear, and where it is practical to do that, 'we are a wholly owned subsidiary of Sears', where it is possible to do so."

Then, on page 26:

"Question: Mr. Moser, what is the corporate purpose of Allstate Insurance Company?

"Answer: It sets forth in the Charter, a copy of which we gave you per your request. It embraces all, substantially all forms of casualty and fire insurance that may be properly written by a company under the Illinois Statute.

"Question: Well, is that generally classified as casualty insurance company?

"Answer: No, sir, it is now classified both, as a casualty and fire insurance company.

"Question: What is the corporate purpose of Allstate Fire Insurance Company?

"Answer: The corporate purpose of the insurance is the corporate writing powers of the Allstate Fire Insurance Company, are now identical with the Allstate Insurance Company?"

The Court:
I didn't hear you there.

Mr. Newman (reading):
"Answer: The corporate purpose of the insurance is the corporate writing powers of the Allstate Fire Insurance Company are now identical with the Allstate Insurance Company.

"Question: Is either such corporation authorized to write life insurance business?

"Answer: No, sir. And it couldn't be under the Statute of Illinois."

Then on page 50:

"Question: When did you first learn of the existence of All States Life Insurance Company, an Alabama Corporation?

"Answer: I personally learned of it in the latter part, sometime of '31 or '32 I think."

(Page 55):

"Question: Do you have any knowledge of any policy holder or prospective policy holder being confused with that Company and All States Insurance Company?"

The Court:
Give him the name, page, he can't give you the page.

Mr. Newman:
Page 55:

"Question: Do you have any knowledge of any policy holder or prospective policy holder being con-

fused with that Company and All States Insurance Company?

"Answer: I know no policy holders of ours have complained to us that when they bought our policy, this one, he thought he was dealing with the Alabama Company. Whether that be true in reverse, Mr. Newman, I have no knowledge.

"Question: Is that a fair statement, that you have no knowledge of any confusion between the two companies?

"Answer: I haven't any offhand."

You want the rest of that read?

Mr. Grisson:

Yes.

Mr. Newman (reading):

"Answer: I haven't any recollection of any confusion during the years. As I said to you, they were a very rather small company, made no public offerings of shares. I didn't think I ever saw the newspaper advertisements of any size. I don't know whether I even saw small ones. The name 'All States' in those early years did not have in my judgment the same meaning in the minds of the public that it has today."

The Court:

Read a little louder, can't you?

Mr. Newman:

Yes, sir.

"Question: Well, isn't it a fact that that company was licensed in a number of states?

"Answer: I haven't any knowledge of it at all, sir."

Then on page 61:

"Question: To the best of your knowledge and belief, does Sears, Roebuck or Allstate Fire Insurance Company or Allstate have any present plan for entering the life insurance business?

"Answer: The matter has been under discussion for a long while for the Life Insurance Industry. The matter was under discussion for a long while, and in my judgment it's a short while before the Parent Company will be back in the 'life business'.

"Question: What would be your estimate as to the choice of the Corporate name for that company?

"Answer: I haven't the slightest notion, sir. I can tell you the name that we would like, and I think we will probably use it.

"Question: What name is that, sir?

"Answer: Allstate Life Insurance Company."

And then, Your Honor, also in the nature of cross examination of Plaintiff's witness, we would like to read from the oral deposition of Mr. Edward Gudeman, Vice President in charge of merchandising for Sears, Roebuck & Company.

The Court:

This is another deposition?

Mr. Newman:

Yes, Your Honor.

The Court:

The witness is not here?

Mr. Newman:

No, sir, the witness is not here. The witness is Mr. Edward Gudeman, Vice President in charge of merchandising for Sears, Roebuck & Company, taken in his office in Chicago.

Page 31:

"Question: Is it your belief that the public is being misled in believing that the Defendant Company in this case is connected with or a subsidiary of Sears, Roebuck and Company, or Allstate Insurance Company?

"Answer: Yes, that is my opinion very definitely.

"Question: Do you know of any specific instance where the public has been so misled?

'Answer: I personally do not.".

And then, Your Honor, on page 75, and in conclusion:

"Question: Mr. Gudeman, do you know of any instance of confusion between 'All States Life Insurance Company', an Alabama Corporation, or Sears, Roebuck and Company, or Allstate Insurance Company?

"Answer: I told you before I didn't know about the Allstate Company of Alabama, so I have no information on that."

Thank you, Your Honor.

Mr. Grissom:

Now, if Your Honor please, the Plaintiffs offer a portion of the deposition of Fay Bozman, (spelling B-o-z-m-a-n, and may I say that she is not present.

The Court:

Deposition of whom?

Mr. Grissom:

Fay (spelling) F-a-y, Bozman (spelling) B-o-z-m-a-n; taken by the Plaintiffs under stipulation, which is on file, in Dallas, Texas, on the 28th day of May, 1956, before a Notary Public and Reporter.

On page 3—no, wait, it isn't page 3—page 44, there are several depositions bound under one cover. Questions by Mr. Kendall:

"Question: Your name, please?

"Answer: Fay Bozman.

"Question: Are you married, Mrs. Bozman?

"Answer: Yes, sir.

"Question: Is your husband living?

"Answer: Yes, sir.

"Question: Is he the Mr. Bozman out at Republic National Life Insurance Company?

"Answer: Yes, sir.

"Question: What is his job out there?

"Answer: He is head of the polio department.

"Question: What is your connection with All States Life Insurance Company?

"Answer: I'm secretary and treasurer of the company.

"Question: And are you a director?

"Answer: No, sir.

"Question: Are you a stockholder in the company?

"Answer: No, sir."

And then I skip to page 68, line 9:

"Question: How many policies has All States Life written to date? Do you know?

"Answer: We haven't actually issued any yet. We have quite a few applications on file, though.

"Question: Do you have any idea how many applications you have?

"Answer: No, sir; I don't.

"Question: Is there as many as a hundred?

"Answer: No. I don't believe we have quite that many."

Ending with line 17. The deposition was signed and sworn to by Mrs. Bozman, the witness, on June 6, 1956, and is on file, with the papers in this suit.

Now, we wish to offer some depositions, and I will ask Mr. Kendall and Mr. Dickinson to present them to the Court.

Mr. Kendall:

This is the deposition of B. D. Walker, taken by stipulation of the parties, and upon—

The Court:

Deposition of whom?

Mr. Kendall:

B. D. Walker, (spelling) W-a-l-k-e-r.

The Court:

I didn't hear you.

Mr. Kendall:

It is the deposition of Mr. B. D. Walker.

The Court:

Walton?

Mr. Kendall:

Walker, (spelling) W-a-l-k-e-r.

The Court:
Walker, yes.

Mr. Kendall:
It is taken by stipulation and upon written interrogatories.

"Direct Interrogatory No. 1: State your name and address.

"Answer: B. D. Walker, 4016 Washington, Houston, Texas.

"Direct Interrogatory No. 2: State your occupation and whether you are self-employed or employed by some other person.

"Answer: I am self-employed, used car dealer."

The Court:
You are going to sleep when asking your questions; speak out, gentlemen.

Mr. Kendall: (reading.)

"Direct Interrogatory No. 3: State whether or not you were ever contacted by any person selling stock in the All States Life Insurance Company.

"Answer: Yes.

"Direct Interrogatory No. 4: If you have answered the next preceding Interrogatory "Yes", please state, if you can, the identity of such person who contacted you.

"Answer: I do not recall his name.

"Direct Interrogatory No. 5: If you have answered the next preceding Interrogatory 'yes', please that you were contacted with reference to stock in All States Life Insurance Company, state whether or not prior to said time you had ever heard the name

"Allstate" used with reference to any other insurance company.

"Answer: I have heard of the Sears, Roebuck Allstate Insurance Company, but I do not know if they spell it the same way.

"Direct Interrogatory No. 6: If you have answered the next preceding Interrogatory 'yes', please state whether or not you identify the name 'Allstate' with any particular insurance company and, if so, the identity of such company.

"Answer: At first I was under the impression it was Sears' Allstate, but on his second visit I asked him about it and he said no.

"Direct Interrogatory No. 7: If you have stated in answer to preceding Interrogatories that you were contacted with reference to stock of All States Life Insurance Company, please state whether or not when you were so contacted at any time you believed that there was or might be some connection between said All States Life Insurance Company and either or both Sears, Roebuck & Company and Allstate Insurance Company.

"Answer: They did not lead me to believe it was Sears, Roebuck Allstate; I was just under that impression that it was.

"Direct Interrogatory No. 8: If you have answered that you were contacted with reference to stock in All States Life Insurance Company, state whether or not you inquired of the person so contacting you as to the possibility of any connection between said company and either or both Sears, Roebuck & Company and Allstate Insurance Company.

"Answer: Yes."

The next is the deposition of W. H. Drain; that is (spelling) D-r-a-i-n, Your Honor.

Mr. Newman:

Wait a minute. Would the Court like to hear the cross interrogatories at this time of that witness?

Mr. Kendall:

I will read the answers, if you want me to.

Mr. Newman:

The cross interrogatories of Mr. B. D. Walker:

"Cross Interrogatory No. 9: Please state whether or not any officer, employee or agent of All States Life Insurance Company has represented to you that All States Life Insurance Company is connected or affiliated with Sears, Roebuck & Company, Allstate Insurance Company or Allstate Fire Insurance Company.

"Answer: No."

Mr. Kendall:

This is the deposition of W. H. Drain, taken by stipulation of the parties upon written interrogatories, and on file among the papers of the Court.

"Direct Interrogatory No. 1: Please state your name and address.

"Answer: W. H. Drain, 302 Denver Boulevard.

"Direct Interrogatory No. 2: Please state your profession.

"Answer: I am a doctor of chiropractic.

"Direct Interrogatory No. 3: Please state whether or not you own stock in All States Life Insurance Company.

"Answer: I do.

"Direct Interrogatory No. 4: If you have answered "Yes" to the preceding Interrogatory, please state on what date you purchased said stock.

"Answer: I don't remember just when it was.

"Direct Interrogatory No. 5: Please state whether or not, on the date you purchased your stock in All States Life Insurance Company, if you have stated you own such stock, you owned a policy or policies of automobile insurance issued by Allstate Insurance Company.

"Answer: Yes, I did, on my automobile.

"Direct Interrogatory No. 6: If you have stated that you presently own stock in All States Life Insurance Company, please state whether you purchased said stock through the mail or whether you purchased the same from a personal contact with an agent or representative of All States Life Insurance Company.

"Answer: Well, I suppose it was an agent. There were two gentlemen here.

"Direct Interrogatory No. 7: If you have answered that you purchased the said stock, if you own any, of All States Life Insurance Company by personal contact, please give the name of the person so contacting you and from whom you purchased said stock.

"Answer: I don't know either of them. I don't remember those names.

"Direct Interrogatory No. 9: Please state whether or not, while you were considering the purchase of stock in All States Life Insurance Company, you were ever informed by any representative of All States Life Insurance Company that said company was in no way connected with either Sears, Roebuck and Company or Allstate Insurance Company.

"Answer: Yes, they told me that they weren't connected with it after we had talked to them for a while.

"Direct Interrogatory No. 10: Please state whether or not, if you have stated that you were personally contacted, you informed the person personally contacting you that you carried automobile insurance with Allstate Insurance Company.

"Answer: I did.

"Direct Interrogatory No. 13: Please state whether or not, prior to any time you considered purchasing stock in All States Life Insurance Company, you were familiar with the use of the name 'Allstate' in connection with goods, wares, merchandise and services.

"Answer: Just an insurance is all, automobile insurance.

"Direct Interrogatory No. 14: If you have answered the next preceding Interrogatory "Yes", please state whether or not the word 'Allstate' indicated to you a connection with any particular company or companies, when said word 'Allstate' was used in connection with goods, wares, merchandise and services.

"Answer: Well, when they mentioned 'Allstate' I immediately brought 'Allstate' automobile insurance to mind. I had been in it a long time and I really thought that is who it was until they told me different.

"Direct Interrogatory No. 15: If you have answered the next preceding Interrogatory "Yes" please name the company or companies with which you connected the name 'Allstate'.

"Answer: Sears, Roebuck is what I connected it with until I was further informed on it."

Mr. Dickinson: (reading:)

"Cross Interrogatory No. 9: If you have answered Direct Interrogatory No. 13 "Yes", please describe in detail the particular types or classes of goods, wares, merchandise and services you have referred to by your answer to that direct interrogatory.

"Answer: Just automobile insurance.

Mr. Newman: (reading.)

"Cross Interrogatory No. 11: Please state whether or not any officer, employee or agent of All States Life Insurance Company has represented to you that All States Life Insurance Company is connected or affiliated with Sears, Roebuck & Company, Allstate Insurance Company or Allstate Fire Insurance Company.

"Answer: No, they never have."

Mr. Kendall:

The next is the deposition of Irby R. Adams, taken in Bexar County, by stipulation of the parties, upon written interrogatories.

Mr. Dickinson: (reading.)

"Direct Interrogatory No. 1: Please state your name and address.

"Answer: Irby R. Adams, 138 Gerald Avenue, San Antonio, Texas.

"Direct Interrogatory No. 2: Please state your occupation and by whom you are employed.

"Answer: I am educational specialist employed with the United States government, Lackland Air Force Base.

"Direct Interrogatory No. 3: Please state whether or not on or about August 15, 1955, you read an

advertisement in a newspaper concerning sale of stock in All States Life Insurance Company.

"Answer: I did.

"Direct Interrogatory No. 4: If you have answered the next preceding Interrogatory "Yes", please state whether or not, in answer to said advertisement, you wrote the following letter:

'Dear Sir:

'I am very interested if this is the company with Sears, Roebuck & Co.

'Please answer the following:

'1. Would you be interested in trading for $30,000 worth of good property at Tex. A & M. College? (College Station, Tex.)

'2. How many shares did the original charter call for? Price?

'3. Have the original shares been split? How many times?

'Please mail details so I will not have to check with the Insurance Commission.

'I am interested in buying outright or trading if the stocks are sound and have not been split too much.'

"Answer: I did.

"Direct Interrogatory No. 5: To what address did you send such letter, if you have answered that you did send such letter?

"Answer: I don't recall. Houston, somewhere, I believe.

"Direct Interrogatory No. 6: Please state whether or not in answer to such letter you received the following from Allstate Insurance Company:

'Mr. I. R. Adams
'138 Gerald Avenue
'San Antonio, Texas

'Dear Mr. Adams:

'Your letter addressed to the All States Life Insurance Company was sent in error to the Allstate Insurance Company and was opened by mistake.

'However, inasmuch as our organization is apparently the company you had in mind, as we are a subsidiary of Sears, Roebuck & Company, I felt I should let you know that the All States Life Insurance Company is in no way connected with our company or with Sears, Roebuck & Company, in spite of the similarity in name.

"I have forwarded your inquiry to the All States Life Insurance Company.'

"Answer: I received a letter from them in about such terms as those. I can't recall exactly.

"Direct Interrogatory, No. 7: Please state whether or not you ever received any answer to your letter from All States Life Insurance Company, and, if you did, please attach the same, or a copy thereof, to your deposition and mark it Exhibit "A".

"Answer: They may have sent me a letter. I don't recall for sure. They may have sent me a letter. I did decide I wasn't interested in the stock. I have no letter.

"Direct Interrogatory No. 8: Please state whether or not you are familiar with the use of the word 'Allstate' in connection with goods, wares, merchandise and services.

"Answer: Yes.

"Direct Interrogatory No. 9: If you have answered the preceding Interrogatory "Yes", please state whether or not the word 'Allstate' when so used in connection with goods, wares, merchandise and services indicates to you any particular identity with any particular company or companies.

"Answer: I identify the term 'Allstate' with automobile insurance and automobile accessories sold by Sears, Roebuck & Company.

"Direct Interrogatory No. 10: If you have answered the next preceding Interrogatory "Yes" please state with what company or companies the word 'Allstate' is identified by you.

"Answer: Sears, Roebuck & Company."

Mr. Newman: (reading.)

"Cross Interrogatory No. 7: Please state whether or not you are familiar with the use of the words 'All States Life Insurance Company'.

or not you are familiar with the use of the words 'All States Life Insurance Company' is that it was the name of the company that advertised stock for sale. The company is also recommended by an insurance stock advisory service as having—as being good stock.

"Cross Interrogatory No. 11: Please state whether or not any officer, employee or agent of All States Life Insurance Company has represented to you that All States Life Insurance Company is connected or affiliated with Sears, Roebuck & Company, Allstate Insurance Company or Allstate Fire Insurance Company.

"Answer: No."

Mr. Kendall:

The next is the deposition of Joseph Wallee, taken on written interrogatory by agreement of the parties, and, Your Honor, the answers and questions are on the same sheet, so I will read both. This is on file among the papers of the Court.

"Direct Interrogatory No. 1: Please state your name and address.

"Answer: Joseph E. Wallee, 7827 N. Keystone Avenue, Skokie, Illinois.

"Direct Interrogatory No. 2: Please state by whom you are employed and in what capacity.

"Answer: United Insurance Company of America as Assistant Secretary and Controller.

"Direct Interrogatory No. 3: Please state whether you are familiar with All States Life Insuance Company, an Alabama corporation.

"Answer: Yes.

"Direct Interrogatory No. 4: Please state whether or not there has ever existed any relationship of any sort between your present employer or any company affiliated with your present employer, and All States Life Insurance Company, an Alabama corporation.

"Answer: Yes.

"Direct Interrogatory No. 5: If you have answered the preceding Direct Interrogatory "Yes" please describe the relationship in detail.

"Answer: Through a reinsurance agreement effective December 3, 1951.

"Direct Interrogatory No. 6: Please state whether or not your employer, or some company affiliated with it, in the year 1950, purchased, owned, or otherwise acquired any capital stock in All States Life Insurance Company, an Alabama corporation.

"Answer: Not in 1950; however, Investors Finance & Thrift Corporation, a Delaware Corporation, did acquire stock interest in this company in 1951.

"Direct Interrogatory No. 7: If you have answered the preceding Direct Interrogatory "Yes", please give the details of such acquisition, giving the date thereof, the number of shares of stock acquired, by whom they were acquired, from whom they were acquired, the amount paid for such stock, etc.

"Answer: By purchase through an escrow agreement with the Union Bank of Montgomery, Alabama, at a price of $20.00 per share.

"Direct Interrogatory No. 8: Please state whether or not your employer or any company affiliated with it, ever reinsured policies of insurance previously issued by All States Life Insurance Company, an Alabama Corporation.

"Answer: Yes.

"Direct Interrogatory No. 9: If you have answered the preceding Direct Interrogatory "Yes", give the details of such reinsurance, including the date thereof, the number of policies involved, the type of policies involved, the face amount of the insurance reinsured, etc.

"Answer: The effective date of the reinsurance was December 3, 1951. The information with regard to the number, type, and face amount of the policies so reinsured is not readily available.

"Direct Interrogatory No. 10: If you have answered that your employer, or a company affiliated with it, did reinsure insurance previously issued by All States Life Insurance Company, an Alabama corporation, please state, if you know, whether the insurance so reinsured was all the insurance then in force in All States Life Insurance Company, an Alabama corporation.

"Answer: To the best of my knowledge, it was.

"Direct Interrogatory No. 13: If you have answered that your employer, or some company affiliated with it, reinsured insurance previously written by All States Life Insurance Company, an Alabama corporation, please state whether any of such insurance was turned back to the said All States Life Insurance Company.

"Answer: Yes.

"Direct Interrogatory No. 14: If you have answered the preceding Direct Interrogatory "Yes" please give the details of such transaction, including the date, the amount of insurance so turned back, and the reason why said insurance was turned back.

"Answer: On or about April 1; 1955, certain 'Thrift Endowment' and 'Mortuary Benefit' policies were re-transferred to All States Life Insurance Company, an Alabama Corporation, because production of that type of business was not allowed under Illinois Statutes.

"Direct Interrogatory No. 15: If, in answer to preceding Interrogatories, you have answered that either your employer or some company affiliated with it purchased stock in All States Life Insurance Company, an Alabama corporation, please state whether or not such employer or affiliated company owning such stock ever received any dividends from All States Life Insurance Company, an Alabama corporation.

"Answer: To the best of my knowledge, dividends were received during Investors Finance & Thrift Corporation's ownership of All States Life Insurance Company, an Alabama Corporation, capital stock.

"Direct Interrogatory No. 16: If you have answered the preceding Interrogatory "Yes", please give the date upon which each such dividend was received and the amount of such dividend per share of stock.

"Answer: To the best of my knowledge, dividends were, received in December, 1951, and September, 1952, in the amounts of $17.00 and $1.00 per share respectively.

"Direct Interrogatory No. 18: If you have answered to preceding Direct Interrogatories that either your employer or some company affiliated with it, purchased stock of All States Life Insurance Company, an Alabama corporation, please state what disposition, if any, has been made of such stock.

"Answer: To the best of my knowledge, disposition of such stock was in the form of a sale.

"Direct Interrogatory No. 19: If you have answered, to the preceding Direct Interrogatory, that such stock has been sold, please state that date upon which it was sold, to whom it was sold, and the price paid therefor.

"Answer: To the best of my knowledge, the sale was to Old South Life Insurance Company, an Alabama corporation, during the latter part of 1952 at a value of $2.00 per share.

"Cross Interrogatory No. 3: If you have answered Direct Interrogatory No. 8 "Yes", please state whether or not All States Life Insurance Company, an Alabama corporation, has any contingent liability with respect to the policies re-insured.

"Answer: To the best of my knowledge there would be no contingent liability by All States Life Insurance Company, an Alabama Corporation, on any policy formally reinsured.

"Cross Interrogatory No. 6: If you have answered direct interrogatory No. 15 "Yes" please state whether or not the dividends were denominated 'partial liquidated dividends'.

"Answer: To the best of my knowledge, they were denominated 'partial liquidating dividends'."

Mr. Newman: (reading.)

"Cross Interrogatory No. 7: If you have answered Direct Interrogatory No. 15 "Yes", please state whether or not such dividends effected complete distribution of all of the capital and surplus of All States Life Insurance Company, an Alabama corporation.

"Answer: To the best of my knowledge, it did not.

"Cross Interrogatory No. 8: Please state whether or not, to your knowledge, any written agreement has ever been made requiring the dissolution of All States Life Insurance Company.

"Answer: I have no knowledge of the corporate affairs of All States Life Insurance Company, an Alabama Corporation."

Mr. Kendall:

This next, Your Honor, is the deposition of D. S. Paddock, taken by stipulation of the parties on written interrogatories, in Harris County, Texas.

Mr. Dickinson: (reading.)

"Direct Interrogatory No. 1: State your name and address.

"Answer: Dexter Sherman Paddock, business address, 5510 Greenleriar, Houston, Texas; residence address, 3711 Glen Haven, Houston, Texas.

"Direct Interrogatory No. 2: State by whom you are employed and in what capacity.

"Answer: I am imployed by the Allstate Insurance Company as Resident Manager of their Houston Regional Office.

"Direct Interrogatory No. 3: If you have answered that you are employed by Allstate Insurance Company, please state whether or not in such employment you exercise any supervisory duties over other employees of Allstate Insurance Company located at Houston, Texas.

"Answer: I have direct supervision over nine department managers, and through these department managers indirect supervision over 284 employees.

"Direct Interrogatory No. 4: Please state whether or not, to your knowledge, the office of Allstate Insurance Company in Houston, Texas, has ever received any mail apparently intended for All States Life Insurance Company.

"Answer: Yes, the office of the Allstate Insurance Company in Houston, Texas, has received mail intended for All States Life Insurance Company.

"Direct Interrogatory No. 5: If you have answered "Yes" to the preceding Interrogatory, state, in as much detail as possible, the nature of such mail and the circumstances under which it has been received.

"Answer: To the best of my recollection the first mail received was about August 2, 1955, from the Wilson Stationery & Supply Company, intended for the All States Life Insurance Company. This bill was in the amount of $171.00 for materials purchased from July 5 through July 21 of 1955. The bill was directed to the All States Life Insurance Company, 3809 South Main Street, Houston, Texas; Telephone Number Jackson 2-5440, the orders were signed by Mr. W. T. Little and Mr. Koster.

"Direct Interrogatory No. 6: State whether or not, to your knowledge, Allstate Insurance Company has received any telephone calls intended for All States Life Insurance Company.

"Answer: Yes. The Allstate Insurance Company has received telephone calls intended for All States Life Insurance Company.".

Mr. Kendall:

Excuse me, if it please the Court, I did not read the complete answer to the fifth interrogatory.

"The second, on or about August 15, 1955, a letter addressed to the All States Life Insurance Company was received by the Houston Office of the Allstate Insurance Company. This letter was from Mr. I. R. Adams, 138 Gerald Avenue, San Antonio, Texas, inquiring whether the company was affiliated with Sears, Roebuck & Company and expressed interest in the stock. I wrote Mr. Adams on August 15, 1955, informing him that the All States Life Insurance Company was not affiliated with Sears, Roebuck & Company or the Allstate Insurance Company and notified him that I had forwarded his letter to the All States Life Insurance Company.

"On or about December 12, 1955, a letter was received addressed to All State Insurance Company, 5510 Greenbriar, Houston, Texas. The letter contained a check for $73.50 payable to All State Insurance Company from the West End Auto Sales, J. E. "Squeaky" Young, and signed by Mrs. Elise Young. We at first thought it was for the salvage payment but after considerable checking through our records and finding no transactions with Mr. Young, we finally telephoned him and he told us it was for stock in the All States Life Insurance Company.

"Another instance, on or about December 2, 1955, a letter addressed to All States Insurance Company, Dallas, Texas, from Arrington Building Corporation, 3814 Juniper, Houston 17, Texas, was forwarded to the Houston Regional Office of Allstate Insurance

Company by Allstate's Dallas Regional Office, who had originally received it. After the Dallas Office had checked through their records and found no obligations owing from the signer of the check, Mrs. J. M. Arrington, they forwarded it to us. We searched our files and could find no evidence that Mrs. Arrington owed us money in the amount of $18.33, which was the amount of the check made payable to the All States Insurance Company. I telephoned Mrs. Arrington who stated the check was intended for payment on her All States Life Insurance Company stock, so I returned the check to her.

"Another instance, on or about February 26, 1956, a letter addressed to All States Insurance Company, Dallas, Texas, was received containing a check for $11.00 payable to All States Insurance Company and signed by Noah J. Webb, of 110 Tenth Avenue W., Texas City, Texas. Again we checked thoroughly and ultimately determined that this check was intended for the All States Life Insurance Company, and I believe we forwarded it to them.

"Another instance, on or about March 23, 1956, a letter was received addressed to All State Insurance Company, Houston, Texas, from the State of Minnesota Securities Division, St. Paul 1, Minnesota. This letter notified us that we were to cease offering our stock for sale in Minnesota until such stock was properly registered. This I felt pertain to the All States Life Insurance Company, as to my knowledger there is no Allstate Insurance Company stock available for purchase.

"Still another instance, on or about April 3, 1956, a letter addressed to All States Life Insurance Company, 3008 Fannin, Houston, Texas, was received by the Allstate Insurance Company, Houston Regional Of-

fice, at 5510 Greenbriar, Houston, Texas. The letter was from Bobby L. Sawyer, with a check payable to All States Insurance Company in the amount of $11.00. This too, we ultimately determined, was misdirected to us and I believe forwarded to All States Life Insurance Company.

"There have been other letters received but these are the only ones on which I have kept records and which were brought to my attention. Each letter received has created additional work and expense in determining that the mail did not pertain to us."

Mr. Dickinson: (reading.)

"Direct Interrogatory No. 6: State whether or not, to your knowledge, Allstate Insurance Company has received any telephone calls intended for All States Life Insurance Company.

"Answer: Yes. The Allstate Insurance Company has received telephone calls intended for All States Life Insurance Company.

"Direct Interrogatory No. 7: If you have answered "Yes" to the preceding interrogatory, state the nature and circumstances of such calls in as much detail as possible.

"Answer: In checking with our PBX operators I understand that we have received quite a few calls that were intended for the All States Life Insurance Company, however, I will speak only of those which were referred to me because the girls did not know how to handle them.

"As I recall, the first call that I received was a few days prior to July 10, 1955, and gave me the first indication that there was an All States Life Insurance Company operating in Texas. This call was from a representative of the Advertising Department of The Houston Post Newspaper. He was calling me

to find out if we had moved our office as he had an advertisement which was to be run on July 10 showing an address different from our 5510 Greenbriar, Houston address. We were quite confused as I did not know that we had any advertisements running at that time, and also could not understand where he would get the address of 629 Alabama, in Houston. He told me that the person authorizing the advertisement was Bennie Fuller and it was for a two column five inch advertisement but he did not know what the copy was as he had not received it yet. After much questioning we noted that it was for the All States Life Insurance Company and not the Allstate Insurance Company. It took two or three phone calls to ultimately determine that it was the All States Life Insurance Company who wanted the advertisement and not the Allstate Insurance Company.

"The next phone call I received, as I recall, was a few days later from a woman inquiring about our stock. She said she understood it was for sale at $5.00 a share. I told her that I did not know of any Allstate stock being available as we were a wholly owned subsidiary of Sears, Roebuck & Company and I was sure that if any stock were available it would be worth much more than $5.00 per share. She stated that she had received a phone call from a man who offered the stock and she wanted to check it before she bought. She wouldn't tell me her name as she stated she did not want to get involved in any trouble or make trouble for anyone else, that her husband was a lawyer and she would take it up with him.

"Another instance which was along about this same time, I received a call from, I believe, the Houston Office of Merrill, Lynch, Pierce, Fenner & Beane inquiring if Allstate was offering their stock, to which

I answered no, but believed they had reference to the All States Life Insurance Company.

"Other cases were along in July, or August, I received, I should judge conservatively, five or six other telephone calls in reference to Allstate selling stock. I did not know who the persons were who called except for Mr. Marcus Thomas, then Executive Vice President and presently President, of the Fidelity Bank & Trust Company in Houston and he had been asked by someone about the All States Life Insurance Company and had called me to see if there was any connection with Allstate Insurance Company.

"Since July of 1955 many of our agents have received, and still do receive, telephoned and personal inquiries about the All States Life Insurance Company. In fact the confusion and activity became so great that I finally asked to be notified of each such inquiry received. At first our own agents were confused, wondering if we had gone into the life insurance business, or if our stock was available for sale.

"These contacts to the agents which were brought to my attention were made in almost all of our fifteen locations, which include Austin, Freeport, Corpus Christi, San Antonio, Beaumont, Galveston, as well as in Houston itself.

"Another instance which was brought to my attention, though I didn't speak to the individual personally, was when our PBX operator, Mrs. Billie Marsh, told me of a call she had received a few days prior from a woman who was so upset that she was crying. This woman had called to complain about the abusive treatment she had received from one of our men who became angry because she wouldn't purchase our stock. Mrs. Marsh explained to the woman that the All States Life Insurance Company

had no connection with the Allstate Insurance Company, and I hope removed the feeling of ill will that the caller had.

"Direct Interrogatory No. 8: State whether or not, to your knowledge, Allstate Insurance Company has, at its office at Houston, Texas, received any checks or other monies intended for All States Life Insurance Company.

"Answer: Yes, we have received checks intended for All States Life Insurance Company.

"Direct Interrogatory No. 9: If you have answered "Yes" to the next preceding Interrogatory, please state the details and circumstances of each such instance.

"Answer: The only instances of which I have personal knowledge were brought out in detail in answer to Direct Interrogatory No. 5, preceding.

"Direct Interrogatory No. 10: Please state whether or not persons dealing with the Houston branch of Allstate Insurance Company ever refer to said Company by any other name than 'Allstate'.

"Answer: Yes, people dealing eith the Allstate Insurance Company do refer to our company by names other than 'Allstate'.

"Direct Interrogatory No. 11: If you have answered "Yes" to the preceding Interrogatory, please describe and give instances of such other reference.

"Answer: Quite often people do refer to us using the plural 'Allstates' or 'All States'. In almost every instance when I mention Allstate and the person is writing it out, I make it a point to tell them it is one word, 'Allstate' rather than two words and still people will get it wrong. I have reference to talks with newspapers, credit references, hospitalization claims and instances of that type.

"Direct Interrogatory No. 12: Please state whether or not newspapers, to your knowledge, have ever referred to Allstate Insurance Company using a name other than 'Allstate'.

"Answer: Yes, newspapers have referred to the Allstate Insurance Company using a name other than 'Allstate'.

"Direct Interrogatory No. 13: If you have answered "Yes" to the next preceding Interrogatory, please give details concerning each such instance and, if possible, attach to your deposition and have marked as Exhibits, copies of such references.

"Answer: I do not have record of every instance that newspapers have used the name 'Allstate' incorrectly, but the attached Exhibit A, Exhibit B and Exhibit C do give samples of the errors which have been made by the press. These errors are becoming fewer because we now make it a point to be sure that they understand the proper spelling of our name because past experience has shown that if we do not, confusion exists.

"Briefly summarizing Exhibit A, Port Arthur News, May 14, 1955, in an article entitled, 'Gifts Slated for Road-E-O Winners' refers twice to the Allstate Insurance Company by the term 'All-State'. The Pasadena Texas Citizen, I do not know just what date, refers to 'All-State Insurance Company'. This reference has the 'All' at the end of the line, however, 'States' is capitalized. The Corpus Christi Times of Friday, April 20, 1956, refers to the 'All-State Insurance Company'. The Houstonian of June 15, 1955, refers to the 'All-State Insurance Company'. The Houston Press of about April 10, 1956, refers to 'Allstate's', as does the Houston Post of July 3, 1955, and the first line in the Houston Post's article of July 3,

1955, shows the other way that Allstate is referred to, 'Allstate' Insurance Company.

"Exhibit B is a copy of an article appearing in the Corpus Christi Times of Thursday, May 10, 1956. Here again the reference is to the 'All-State Insurance'."

(Pages 171 through 179, inclusive, comprising Exhibits A, B and C attached to the written deposition of D. S. Paddock, were deleted from this Statement of Facts by agreement of counsel because they were not read into the Record at the time of trial.)

"Direct Interrogatory No. 14: Please state whether or not, to your personal knowledge, any confusion exists or has existed in Harris County, Texas, between Allstate Insurance Company and All States Life Insurance Company.

"Answer: Yes, confusion exists and has existed in Harris County, Texas, between the Allstate Insurance Company and All States Life Insurance Company.

"Direct Interrogatory No. 15: If you have answered "Yes" to the next preceding Interrogatory, please give, in detail, the facts upon which you have so answered.

"Answer: Details covering this confusion have been brought out in the answers given to preceding Interrogatories numbers 5, 7, and 9.

"Direct Interrogatory No. 16: State whether or not, on or about December 14, 1955, Allstate Insurance Company maintained a checking account at the First National Bank, Houston, Texas.

"Answer: Yes, on or about December 14, 1955, the Allstate Insurance Company maintained a checking account at the First National Bank, Houston, Texas.

"Direct Interrogatory No. 17: If you have answered "Yes" to the preceding Interrogatory, please state

whether or not, to your knowledge, prior to November 30, 1955, a draft payable to All States Life Insurance Company for $38.50 and drawn on the account of Edward W. Wey, was charged to the general bank account of Allstate Insurance Company."

Mr. Newman: (reading.)

"Cross Interrogatory No. 9: If you have answered that you are employed by Allstate Insurance Company, please state whether Allstate Insurance Company transacts any life insurance business in the State of Texas.

"Answer: To the best of my knowledge the Allstate Insurance Company does not transact any life insurance business in the State of Texas.

"Cross Interrogatory No. 10: Please state whether or not any officer, employee or agent of All States Life Insurance Company has represented to you that All States Life Insurance Company is connected or affiliated with Sears, Roebuck & Company, Allstate Insurance Company or Allstate Fire Insurance Company.

"Answer: No officer, employee or agent of All States Life Insurance Company has represented to me that All States Life Insurance Company is connected or affiliated with Sears, Roebuck & Company, Allstate Insurance Company, or Allstate Fire Insurance Company.

"Cross Interrogatory No. 12: State whether or not, to your knowledge, the office of Allstate Insurance Company in Houston, Texas, has ever received any mail apparently intended for any company other than Allstate Insurance Company or All States Life Insurance Company.

"Answer: I have checked with our mailroom to see if the Allstate Insurance Company in Houston has ever received any mail apparently intended for any company other than the Allstate Insurance Company or All States Life Insurance Company. The information I obtained was that to the best of their recollection they did not recall receiving any mail carrying the name Allstate, or Allstates or All State or All States, that was not intended for our company or the All States Life Insurance Company. Mail has been received for other companies, however.

"Cross Interrogatory No. 13: If you have answered "Yes" to the preceding interrogatory, state, in as much detail as possible, the nature of such mail and the circumstances under which it has been received.

"Answer: Mail that has been received that was not intended for our company is primarily for organizations whose post office boxes in the Rice Station, Houston, are close to ours and apparently have been thrown in the wrong boxes. Our box number is 6807. We receive, occasionally, mail for the following: Maryknoll Fathers, P. O. Box 6772; Chevrolet Division of General Motors, P. O. Box 6774; and Triangle Refineries, P. O. Box 6867. We also receive misdirected mail from the central postoffice in Houston that is intended for the "Old National Insurance Company", apparently because they have a payment envelope that is very similar to our envelope in color and size.

"Cross Interrogatory No. 15. State whether or not, to your knowledge, Allstate Insurance Company has received any telephone calls intended for any company other than Allstate Insurance Company or All States Life Insurance Company.

"Answer: Yes, the Allstate Insurance Company has received telephone calls intended for companies other than Allstate Insurance Company or All States Life Insurance Company.

"Cross Intrrogatory No. 16: If you have answered "Yes" to the preceding Interrogatory, state the nature and circumstances of such calls in as much detail as possible.

"Answer: Other than calls for the All States Life Insurance Company and the Allstate Insurance Company, we receive occasional calls for DeMontrond Buick Company, whose phone number is Jackson 9-4761, as contrasted to our phone number of Jackson 9-4721. PBX operators tell me they have received a few calls also for the Fannin State Bank, Jackson 9-4251 and the Allstate Advertising Agency, Jackson 2-5863. All of the above mentioned calls are not referred to me, however, as there generally is no confusion in notifying these people calling that they have the wrong number. It is only the All States Life Insurance calls which have been referred to me because our switchboard operators were not sure whether the call was for our company or not."

Mr. Kendall:

Attached to the deposition of Mr. Paddock are certain exhibits, and we tendered these in evidence as Plaintiff's Exhibits with the appropriate numbers.

(The exhibits referred to were here marked Plaintiff's Exhibit No. 30 for identification.)

Mr. Kendall:

This is one question from the deposition of J. Byron Saunders, taken by stipulation of the parties, and on

file among the records of the cause. Mr. Saunders is presently Chairman of the Board of Insurance Commissioners.

"Cross Interrogatory No. 8: Please state whether or not the records of the Board of Insurance Commissioners reflect whether All States Life Insurance Company, an Alabama corporation, ever wrote any direct insurance or whether its business in the State of Texas was limited solely to re-insurance.

"Answer: The records show that on July 6, 1937, All States Life Insurance Company, an Alabama Corporation, assumed by reinsurance agreement, the outstanding business of National Standard Life Insurance Company, a Texas corporation in receivership. A letter from All States Life Insurance Company, Montgomery, Alabama, dated February 23, 1938, and addressed to the Hon. R. L. Daniel, Chairman of the Texas Board of Insurance Commissioners, is in the official files of this office. Said letter states that All States Life Insurance Company is not filing application for license in Texas for the current year and that said company has no agents in the State of Texas and has written no business in Texas since the date of its admittance, having requested license in 1937 for the purpose only of being of such service as possible to certain policyholders of the National Standard Life Insurance Company residing in Texas."

Mr. Newman:

Direct Interrogatory No. 2 of the same witness:

"Please state whether or not you are a member of the Board of Insurance Commissioners for the State of Texas.

"Answer: Yes.

"Direct Interrogatory No. 3: If you have answered the preceding interrogatory "yes", please state how long you have been a member of the Board of Insurance Commissioners of the State of Texas.

"Answer: Since October 10, 1953.

"Direct Interrogatory No. 6: Please state whether or not All States Life Insurance Company, a Texas corporation, was licensed to transact business in the State of Texas, on July 25, 1955, for the year ending May 31, 1956.

"Answer: Yes.

"Direct Interrogatory No. 7: Please state whether or not All States Life Insurance Company, a Texas corporation, has been licensed to transact life insurance business in the State of Texas for the period from June 1, 1956, through May 31, 1957.

"Answer: Yes.

"Direct Interrogatory No. 8: Please state whether you know of any instance or instances of confusion in the minds of the public between All States Life Insurance Company, a Texas corporation, and any of the following companies: Allstate Insurance Company, Allstate Fire Insurance Company, Sears, Roebuck & Company.

"Answer: I recall no instance or instances of confusion which has been brought to my attention.

"Direct Interrogatory No. 10: Please state whether or not the records of the Board of Insurance Commissioners reflect any instance or instances of confusion in the minds of the public between All States Life Insurance Company, an Alabama corporation, and any or all of the following corporations: Allstate Insurance Company, Allstate Fire Insurance Company, and Sears, Roebuck & Company, during the year 1937 or thereafter.

"Answer: I am not aware of any instance or instances of confusion revealed by the records of the Board of Insurance Commissioners. The Board of Insurance Commissioners has approximately three hundred employees, and since the mail and records on instances of confusion, if any, might have come to the attention of some employee, I cannot positively state that there are no instances of confusion revealed by our department records.

"Cross Interrogatory No. 13: Please state whether any person or persons have ever inquired of you as to the existence of a relationship between All States Life Insurance Company and Sears, Roebuck & Company and/or Allstate Insurance Company.

"Answer: I recall no such instance.

"Cross Interrogatory No. 14: Please state whether the Board of Insurance Commissioners of the State of Texas has received any inquiries with reference to a possible relationship between All States Life Insurance Company and Sears, Roebuck & Company and/or Allstate Insurance.

"Answer: I am not aware of any such inquiries."

Mr. Grissom:

Your Honor, please, by oversight, there was one passage from the oral deposition of Mr. Henry S. Moser, offered this morning, which was not read.

I refer to page 69, beginning with the first question, cross examination, by me:

"Question: Did you ever have a conversation with Mr. Biggers?

"Answer: Yes, sir, I had a conversation with Mr. Biggers.

"Question: When was that, Mr. Moser?

"Answer: In August of 1955, I believe.

"What was the conversation?

"Answer: I have known Mr. Biggers over the years, having met him at Industry Meetings, and I have had a speaking acquaintance with him at least, and I telephoned Mr. Biggers one day at his offices one day in Dallas, and said to him that our people are very, very much disturbed and upset over the action of Mr. Biggers, and his associates in adopting the name, 'All States Life Insurance Company'.

"That we felt that that would have no result other than great confusion in the minds of the public, and that we had spent millions of dollars over the period of years and in advertising the name Allstate, and so had our—and so had our Parent Company. That is that in our opinion, it is our feeling that the public generally associated the term with Sears, and wondered whether there was anything that could be done toward the possible change of their dropping the use of that name.

"I think Mr. Biggers replied that they were not in the same business, they were not in that business. And that they were in the Life Insurance Business and therefore that company could not result in any confusion. And made the same comments that Mr. Smith made to me about our Allstate Fire Insurance Company.

"I said to Mr. Biggers upon that occasion, that the fact that they were in another branch of the insurance business in my judgment under the Federal Cases didn't entitle them to use that name. That that express proposition had been recently decided in one of our own cases in the Court of Appeals in Pennsylvania.

"And I asked him whether he would be interested in seeing the opinion. He said he would, and I sent it to him, and he indicated no willingness to change, to do anything about correcting what we thought was an injustice.

"He said that he planned to be in Chicago for the American Life Convention which I think was going to meet in the early part of October, and if I wanted to, he would be glad to talk to me. And I said, as far as I was concerned, in my judgment, that would be too late. That is my own recollection as to the conversations I had with him, I judge.

"Question: Would you state whether you offered money to change the name of his company?

"Answer: I don't have any recollection of that having been discussed. I think we talked about vast sums in the building up good will of our name, and they said they too had spent some money in connection with the All States Life Insurance Company and the incorporation.

"I said to him that we had upon some occasions indicated a willingness to pay for the cost of the stationery on hand, any stationery on hand or things of that sort, and I think that was the only subject of funds upon that conversation."

Mr. Grissom:

Now, we offered awhile ago, and they hadn't been —we didn't get them out, certain exhibits attached to Mr. Moser's deposition. One of them was Exhibit 46, and I want to offer it—the other one, and get it marked.

The Court:

The exhibits have been offered as you have gone along, attached to the depositions.

Mr. Grissom:

Yes, I wanted to get them marked, but if we don't want to take time, we may consider them in evidence as shown by the record.

The Court:

The Reporter has got them as you offered them along.

Mr. Grissom:

All right.

The Court:

The Plaintiff rests?

Mr. Grissom:

The Plaintiff rests, Your Honor, please.

The Court:

Call your first witness, please.

Mr. Carrington:

We would like to call Mr. Arthur Coburn. Mr. Coburn, you have not been sworn. Would you be sworn, please.

ARTHUR COBURN, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Carrington:

Q. Mr. Coburn, will you please tell the Court your name, the City of your residence, and what your business connection is?

A. My name is Arthur Coburn; I reside in Highland Park; and I am now and have been for over twenty years, Vice President of the Southwestern Life Insurance Company.

Q. Over how many years have you been in the life insurance business, sir?

A. I went into the life insurance business in the year 1905.

Q. By virtue of your experience in the life insurance business, are you in a position to testify as to how life insurance business in Texas and other states has been transacted, say, during the past thirty years, generally?

A. I know something about it.

Q. Well, now, is the insurance industry divided into branches of various kinds of insurance companies by types of insurance that they write?

A. Yes, sir.

Q. What branches?

A. Life, fire, casualty.

Q. Those are the chief branches?

A. Yes, sir.

Q. Do life insurance companies in Texas sell fire or casualty insurance generally?

A. No, sir.

Q. Do fire or casualty companies sell life insurance policies in Texas?

A. No, sir.

Q. Why not?

A. The law prohibits it.

Q. Is there any comparable situation over the country generally?

A. That is the general situation in the several states.

Q. Do I understand, therefore, that there is or is not competition as between life insurance companies and casualty insurance companies?

A. There is not.

Q. Could there be, or is there potential competition between them?

A. No.

Q. Suppose we have two companies doing business in Texas, one as a life insurance company, and one as a casualty insurance company, and their names are identical except one word. I will call them hypothetically in this question, "X" Life Insurance Company and "X" Casualty Insurance Company. In the insurance industry, is there any confusion in the similarity of their names in the fact that there is dissimilarity only in that one word?

A. No, sir.

Mr. Grissom:

Wait a minute.

The Court:

I object—I sustain the objection, the Court will have to pass on that.

(By Mr. Carrington):

Q. I would like, Mr. Coburn, to ask you if you know in your own knowledge whether there are or not numerous instances of life insurance companies having names very similar to the names of fire insurance companies or casualty insurance companies, there being the one difference as to whether the word "life" or "fire" or "casualty" is in their names?

Mr. Grissom:

We object to that, Your Honor, being immaterial.

The Court:
No, I will overrule that objection.

Mr. Grissom:
To which we except.

A. Yes, sir.

(By Mr. Carrington):
Q. Without going into a great deal of detail, sir, will you illustrate the answer by matters in your own experience?

The Court:
I don't think that is proper.

Mr. Carrington:
Sir?

The Court:
I don't think that is proper. Anything else?

(By Mr. Carrington):
Q. There is, Mr. Coburn, an insurance company engaged in other than life insurance in Dallas, Texas, named Southwestern Insurance Company, is there not?

Mr. Grissom:
We object to that, Your Honor, as being irrelevant and immaterial; that is an entirely different proposition.

The Court:
He has got a right to ask that; we will see.

Mr. Grissom:
All right. He didn't hear you, Paul.

Mr. Carrington:
I am asking in Dallas, Texas, is there some other Southwestern Insurance Company other than the Southwestern Life Insurance Company, which you are connected with.

Mr. Grissom:
I object to that as being irrelevant and immaterial.

The Court:
Go ahead and answer the question.

A. Yes, sir.

(By Mr. Carrington):
Q. How is it named?
A. Southwestern Fire Insurance Company.

The Court:
All right.

(By Mr. Carrington):
Q. Is there any existing confusion among those in the insurance industry as between those two companies?

Mr. Grissom:
If Your Honor please, we object to that as being irrelevant and immaterial; the circumstances under which they use it are not shown, and then besides—

The Court:
Well, he has got a right to say whether he knows of any confusion of that sort or not. The same as you had a right to show that there was some confusion.

Mr. Grissom:
Your Honor, we think it is a different company.

The Court:
What is your name?

The Witness:
Coburn.

The Court:
Caldwell?

The Witness:
(spelling) C-o-b-u-r-n.

The Court:
Yes. Anything else, Mr. Carrington?

Mr. Carrington:
The witness didn't get to answer that last question.

The Witness:
I answered it.

The Court:
He answered it.

Mr. Carrington:
All right, sir.

(By Mr. Carrington):

Q. In your insurance experience, are you familiar with what is known as the American Agency System in the insurance industry?

Mr. Grissom:

If Your Honor please, we object to that as being irrelevant and ir material, about the American Agency System; it c uldn't have any relevancy here; All States Insurance Company doesn't operate under American Agency.

The Court:

You don't need to make an argument every time. I overrule your objection.

Mr. Grissom:

To which I except.

The Court:

All rulings are considered excepted to in this Court, adverse rulings.

A. Yes, sir.

(By Mr. Carrington):

Q. Please explain whether any life insurance companies with your knowledge, doing business in Texas, are doing business other than under the American Agency System?

A. No, sir.

Q. Explain that system so that the Court will understand.

The Court:

Well, the Court can understand it.

Mr. Carrington:
All right, sir.

The Court:
The Court has some understanding, you know.

Mr. Carrington:
I didn't mean, certainly, to imply otherwise.

The Court:
Anything else?

(By Mr. Carrington):
Q. The general situation in the insurance industry that you have testified to is known, or not, is it, within your understanding, by all of those in the insurance industry in Texas, including agents who are writing insurance under the American Agency System?

Mr. Grissom:
Your Honor, please, I don't know that he can know that; I object to it.

The Court:
Well, he is under oath here, let him answer, let him answer.

(By Mr. Carrington):
Q. I am asking generally whether that is or is not generally known by people in the industry.

Mr. Grissom:
I object to that as being too broad.
A. I cannot testify as to the knowledge of anybody else except myself.

The Court:
Why, of course not.

A. Except myself.

The Court:
Let's go on and get through, now, gentlemen.

(By Mr. Carrington):
Q. Well, brokers and agents in the industry are the ones that place all of the life insurance in Texas?
A. Yes, sir.

Mr. Carrington:
That is all.

The Court:
Any cross, gentlemen?

Cross Examination.

By Mr. Grissom:
Q. Mr. Coburn, you wouldn't say that a company organized to write life insurance couldn't write it directly through paid agents instead of commission agents?
A. I would not so testify.
Q. Yes, sir.

The Court:
All right.

Mr. Grissom:
That is all.

The Court:
Call your next witness.

Mr. Carrington:
Mr. Foster Yancey.
Mr. Coburn may be excused, may he not?

Mr. Grissom:
Yes, indeed.

Mr. Carrington:
All right, Mr. Yancey, you have not yet been sworn; will you please?

FOSTER YANCEY, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Carrington:
Q. Mr. Yancey, I would like for you to tell the Court your name, your residence, and your present business.
A. Foster Yancey; Dallas, Texas; and I am in the insurance business.

The Court:
Speak out so we can hear you.

A. Foster Yancey, Dallas, Texas, and I am in the insurance business.

(By Mr. Carrington):
Q. Are you an official of any insurance company?

A. Yes, sir, I am president of the Southwestern Fire & Casualty.

Q. Are you connected in any way with any general insurance agency?

A. I am a senior partner in the firm of T. A. Manning and Sons, Insurance Managers.

Q. How long have you been in the insurance business in Texas?

A. Twenty years.

Q. How long have you been a partner in the T .A. Manning and Sons, a general agency in Dallas?

A. Since 1938.

Q. And how long have you been an official of the Southwestern Fire & Casualty Insurance?

A. Seven years.

Q. Since its organization?

A. Since its organization, yes.

Q. Are you in a position by virtue of your experience in the insurance industry to testify as to how the insurance business is conducted generally in Texas?

A. Well, a great portion of the business is conducted under the American Agency System.

Q. You are in position to testify by—your experience—as to how it is conducted?

A. Yes.

Q. Now, I would like for you to explain to what extent the fire and casualty business in Texas is conducted under the American Agency System?

A. Well, there are agents who solicit business for companies for a commission.

Q. What percentage of the business written, approximately, in Texas, in the fire and casualty business field, are handled by the agents or brokers under the American Agency System?

A. I would say eighty percent.

Q. Do you know of any life insurance business that is conducted other than under the American Agency System?

A. No, I don't.

Q. Now, is the insurance business in Texas divided into classes of companies, and if so, what are the major classifications of the companies?

A. Well, a company might be licensed to write everything, fire and casualty, and marine, except life insurance in the State of Texas.

Q. A life insurance company might be licensed to handle this other kind of insurance?

A. Life insurance.

Q. Life only. Is there any competition, therefore, between insurance companies that have authority to sell life insurance with the insurance companies that have authority to sell these other kinds of insurance?

A. I see none.

Q. Is there potential competition between them?

Mr. Grissom:

We object to that as being a hypothetical question; it is not one that is subject to expert proof.

The Court:

Go ahead.

Mr. Grissom:

I think it is a legal question.

The Court:

They would have to amend the laws if there were any potential competition. All right.

(By Mr. Carrington):

Q. Your company is Southwestern Fire and Casualty Company, and it has its home office in what city?

A. Dallas.

Q. Are there any other insurance companies doing business in Texas within your knowledge with the name "Southwestern"?

A. Yes, I believe there are four—there are three others; the Southwestern Life, the Southwestern Indemnity, and the Southwestern Title & Guaranty.

Q. The Southwestern Life is headquartered at what city?

A. Dallas.

Q. Is it an older company than yours?

A. Yes, sir.

Q. Yours, when organized, was much smaller, and is it still smaller?

A. It is a small company, yes.

Q. Has there been any instances of confusion in mail as addressed, or in communications, or other communications during the first period of organization of your company, as between Southwestern Life Insurance Company, and your new company?

A. Occasionally, we get a little of their mail, and they get a little of ours.

Q. As your company has grown, has the tendency of that increased or decreased?

A. It has decreased.

Q. Where are the headquarters of the other Southwestern companies that you have testified about?

A. The title company is in Rusk, Texas, and the indemnity company is in Waco.

Q. Have you had any similar experiences as to mail or messages or communications of any sort with either of those companies and your company?

A. No, sir.

Q. The Southwestern Fire & Casualty?
A. No, sir.

Mr. Carrington:
In respect to the order of the Court, I will not go into one matter as I otherwise had planned to do.

The Court:
Any cross examination, gentlemen?

Cross Examination.

By Mr. Grissom:
Q. Mr. Yancey, did you used to be connected with Employers Casualty?
A. Yes, sir.
Q. It is a direct writing company?
A. Yes, sir.
Q. Like the Allstate Company, it sells through paid agents?
A. And branch offices.
Q. And branch offices throughout the country. There is a lot of that going on, isn't there, the Allstate, and the Farm Bureaus, and—
A. Yes, there is quite a bit of it.
Q. You keep up with the statistics in the insurance business, don't you?
A. Pretty generally, yes.
Q. Well, you know it is a fact that more than thirty percent of all of the automobile insurance is written through the direct wirting companies, such as the Allstate, and the Nationwide, and the Farm Bureaus, maybe in Illinois, and California, whatever they are, you know that to be substantially true, don't you?

A. Yes, there is enough business for everybody.

Q. Sure, there is enough business for everybody. Now, you said awhile ago that you are not in the life insurance business?

A. Yes, sir, I am in a way.

Q. Well—

A. I represent a life insurance company.

Q. You have got one in the agency?

A. Yes.

Q. Your primary interest in insurance is in the casualty field?

A. Fire.

Q. Fire and casualty field?

A. Fire and casualty.

Q. The Southwestern Casualty Company is a fire and casualty company. You write insurance on fire in stores and dwelling houses and things of that kind?

A. Yes.

Q. You didn't select the name "Southwestern" to indicate the source of where the produce came from, but to indicate a region, didn't you?

A. An area.

Q. An area in which you serve, and you assume that is the same way with the Southwestern Life, and these other people. You are not familiar with the law of trademarks and trade names under the Lanham Act?

A. No, sir.

Q. No, sir. You know, though, what is meant by a secondary meaning, don't you, in that a name may have, for instance, when you think of Allstate, do you think of Sears, Roebuck?

A. No, except for the fact that they own it, except I know it is an insurance company, and that is all.

Q. Well, do you know or did you ever make any investigation to find out that many people do—

The Court:

Do you want to cross examine him about his testimony here, or are you trying to qualify him on some other matter?

Mr. Grissom:

Well, I intended to cross examine him.

(By Mr. Grissom):

Q. Well, let me say this, ask you this, Mr. Yancey: there isn't any law against a life insurance company doing a direct writing business like Allstate Insurance Company, and Employers Casualty Company, and the Texas Employers Insurance Association, or any of the other direct companies, is there?

A. None that I know of.

Q. Well, you know from your knowledge of the industry that the Allstate Insurance Company is a direct writing company—

A. Yes, sir.

Q. —don't you? You know that they do not write under the American Agency System?

A. That is right.

Q. You do know that their contacts are direct with the public through their paid agents?

A. That is right.

Q. Yes, sir. Now, in the American Agency System, the agent is the expert, isn't he?

A. Yes, sir.

Q. And over the years, the agent who is the commissioned agent and sets up an office, people go to him, and buy insurance on his reputation?

A. Generally speaking, that is right.

Q. Yes, generally speaking. The company, and the name of the company, as far as the customer of a

person operating as an agent under the American Agency System, is not as important as it is to the paid agent of a company who is doing direct solicitation, that would be true, wouldn't it?

A. Well, that would be a hard question to answer.

Q. Well, you know, you know in your business, that you have got agents, who are planted in agencies who are better known and are older than the Southwestern Fire & Casualty?

A. That is right.

Q. And you have every reason to believe that there are customers of those well established agencies who go there and buy whatever those—the agents give them, they don't go there to buy Southwestern Fire & Casualty or the Travelers or the Fidelity Casualty or anybody else, do they, as a general rule?

A. Generally speaking.

Q. That is the theory of the American Agency System, that the public buys from the agent on the reputation of the agent; direct writing companies like the Allstate, it buys from the company, direct?

A. Well, the direct writers generally speaking are selling price.

Q. Well, I know, I know.

The Court:

Just answer what you know. You don't know what the public does, do you? Watch his questions now, and let's get along. He is asking you a lot of questions about what the law is, and what the people know, and things like that.

The Witness:

All right, Your Honor.

(By Mr. Grissom):

Q. The reason I am going at it, I am not attacking the American Agency System, because a large number of my clients operate like that, and I am not attacking your company because I am a stockholder.

The Court:

Just a moment. Do you want to ask him anything?

Mr. Grissom:

Yes.

The Court:

All right, ask the question then.

(By Mr. Grissom):

Q. All right. The agent who is employed generally by the direct writing company is not usually an old line, well established agent in the community?

The Court:

Now, answer that first.

Do you know that or not?

The Witness:

Well, I can't answer it. I would say yes.

The Court:

All right.

Mr. Grissom:

That is all.

The Court:

Call your next witness, please.

Mr. Grissom:
That is all.

Mr. Carrington:
Mr. Byron Beavers.
Mr. Yancey may be excused, may he not?

Mr. Grissom:
Indeed. Would you excuse Mr. Tayloe, too?

Mr. Carrington:
Yes.
Mr. Beavers, have you been sworn?

Mr. Byron Beavers:
No, sir.

Mr. Grissom:
Will you be sworn, please.

BYRON BEAVERS, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Carrington:
Q. Mr. Beavers, I would like for you to speak up, now, so all of us can hear. Will you tell the Court, please, your name, your residence, and your present position or business?
A. Byron Beavers.

The Court:
He asked you to speak up, now.

A. Byron Beavers, Jefferson City, Missouri; and I am in the business of brokering insurance companies.

(By Mr. Carrington):

Q. Have you held any official position in the insurance industry in the past?

A. I have been an examiner—

The Court:

Answer that yes or no; have you?

The Witness:

Yes.

(By Mr. Carrington):

Q. What positions?

A. Examiner, Assistant Actuary, and Chief Examiner of the Division of Insurance of the State of Missouri.

Q. Over how many years have you been in the insurance industry?

A. 22 years.

Q. Are you from your experience in position to testify as to the ways in which the insurance business is generally conducted as a business in the several states?

A. Yes.

Q. Are insurance companies generally classified into groups or classes or types of companies?

A. Yes.

Q. What are the principal types of companies of insurance companies?

A. Fire, life, and casualty.

Q. Generally, do fire companies write life insurance business?

A. No.

Q. Do casualty companies write life insurance business?

A. No.

Q. Do life insurance companies write fire or casualty business?

A. No.

Q. Why not?

A. It would be in violation of their charter powers in most of the states under which they would operate.

Q. Is there existing competition in the insurance industry between life insurance companies on the one hand or fire or casualty insurance companies on the other?

A. No.

Q. Is there potential competition between them?

A. No.

Q. Are there, within your knowledge, many instances of similarities of names of insurance companies licensed to do business in the same state, but in these several classes rather than in the same class?

A. Yes.

Q. I would like to ask if you have a list with you of such a group of insurance companies as authorized to do business in your State of Missouri?

Mr. Grissom:

Now, if Your Honor please, we object to that—

The Court:

Yes, I think that is immaterial here.

Mr. Carrington:

All right.

(By Mr. Carrington):

Q. Do life insurance companies, within your knowledge, always do business under the American Agency System of placing their insurance?

A. Would you repeat the question, please?

Q. Do life insurance companies, insofar as you know, exclusively use the American Agency System in placing their insurance?

A. In almost all instances.

The Court:

All right.

Mr. Carrington:

Just one minute.

The Court:

Any cross?

Mr. Carrington:

Let me ask Mr. Newman one question No further questions.

The Court:

Any cross?

Cross Examination

By Mr. Grissom:

Q. What were your initials, sir? I didn't get it?

A. Byron.

Q. You are not W. N. Beavers?

A. No, sir.

Q. Your name is Beavers?

A. Yes, sir.

Q. Are you related to W. N. Beavers?

A. No, sir.

Q. You say you have been in the business a long time. You do know that groups of companies operate together?

A. Yes.

Q. Like the Travelers Insurance Company and the Travelers Indemnity Company, and the Travelers Fire Insurance Company?

A. Yes.

Q. You know that, just know it in the industry. You know that they are not in competition with each other, but they operate—

The Court:

Do you want to ask him any questions or do you want to tell him something?

Mr. Grissom:

No, I am asking him.

The Court:

Well, ask him a question.

(By Mr. Grissom):

Q. Well, aren't they—they are not—that is a question—are they engaged in competition with each other?

A. Could I ask you to repeat your question?

Q. All right, all right. We will take a company like you said you know, the Travelers Insurance Company, the Travelers Indemnity Company, and the Travelers Fire Insurance Company. State whether or not it is a fact that they generally operate as a team.

A. Yes.

Q. You wouldn't say, therefore, that they were in competition with each other, would you?

A. No.

Q. No. All right. By the way, you say that it is generally true in this country, and I may agree with you, that fire insurance companies, or casualty insurance companies, are not authorized under the laws of some states to write life insurance?

A. That is right.

Q. That is right. But you know from your knowledge of the history of the business that there are a few companies who were chartered a long time ago that got the power to write casualty as well as life insurance, and you know that one of them is the Travelers Insurance Company by direct charter of the Legislature of Connecticut, you know that as a matter of history in the business?

A. Can I qualify my answer? They can only do that in the states in which they are chartered, and not the states in which they are licensed.

Q. All right. If at a given time the laws of the State prohibit the casualty company from writing life, you don't know of any reason why the law couldn't be changed and permit one insurance company to write all forms of insurance, including life, do you?

The Court:

He has made it very plain, Counsel, that an insurance company writes under the provisions of the State. Authorized to write life, that is what it writes; authorized to write casualty, that is what it writes; authorized to write fire; that is what it writes; and nothing else. Now, that is plain. Let's move along.

Mr. Grissom:
I have no further questions. Thank you.

The Court:
Anything else? Call your next witness.

Mr. Carrington:
May Mr. Beavers be permanently excused?

Mr. Grissom:
Yes.

Mr. Carrington:
All right, thank you, Mr. Beavers.
If the Court please, we have here a list which under our stipulation, I thought we had a stipulation that it might be introduced in evidence. It is certified by the Board of Insurance Commissioners, and is the list of authorized insurance companies doing business in the State of Texas at this time.

Mr. Grissom:
Your Honor please, our stipulation was that there would be no objection as to its—

Mr. Carrington:
Yes.

Mr. Grissom:
—as to its being properly proved up, but we do object to it on the grounds that it is irrelevant and immaterial, what other companies are doing business in Texas; we are only dealing with two here.

The Court:
Yes, I think that is a good objection. We just try this case, gentlemen.
All right, Defendant rests?

Mr. Carrington:
No, sir.

R. J. FLECHTNER, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Newman:
Q. Will you please state your name, sir?
A. My name is R. J. Flechtner.

The Court:
You will have to talk loud, now, Counsel, so I can hear you, and so they can all hear you.

A. My name is R. J. Flechtner.

(By Mr. Newman):
Q. Mr. Flechtner, where are you—

The Court:
What is your name?

The Witness:
Flechtner, R. J.

The Court:
R. J. what?

The Witness:
Flechtner, (spelling) F-l-e-c-h-t-n-e-r.

The Court:
All right.

(By Mr. Newman):
Q. Mr. Flechtner, where are you employed, please, sir?
A. By the Southwestern Bell Telephone Company.
Q. What are your duties?
A. I am the Directory Production Manager.
Q. Have you been subpoenaed to appear here today, sir?
A. I have.
Q. Have you been subpoenaed to bring with you the current telephone books of the Cities of Dallas, Saint Louis, Miami, Cleveland, Baltimore, Denver, Boston, Newark, Detroit, Manhattan, Los Angeles, Chicago, and Houston?
A. I have.
Q. Have you brought them with you, sir?

Mr. Newman:
I will hand this—mark this next, Defendant's 4, please.

(The instrument referred to was here marked Defendant's Exhibit No. 4 for identification.)

(By Mr. Newman):
Q. I will hand you these papers, which have been marked Defendant's Exhibit 4, and ask you if you can identify those papers, please, sir.
A. These are photostats of certain directory pages in those directories that you named.

The Court:
Photostats of what?

The Witness:
Photostats of certain directory pages in the directors in which he named—

Mr. Grissom:
Now, we object to the photostats from telephone directories showing names on the ground that they are irrelevant and immaterial, and could throw no light on any issue.

The Court:
Can't we get down to making objections here without making a speech every time? You object to them? I say, you object to them?

Mr. Grissom:
Yes, indeed.

The Court:
I sustain the objection as immaterial. Anything else?

Mr. Newman:
If the Court please, we have pled affirmatively that the name "Allstate" has had no secondary meaning, and it has lost its distinctiveness, and we intended to prove hundreds of other companies with that name.

The Court:
No, I think it is a good objection, gentlemen.

Mr. Newman:
All right, sir.

The Court:
Call your next witness.

Mr. Carrington:
Any cross examination?

Mr. Newman:
If the Court please, we would like to offer in evidence certified copies of the articles of incorporation of approximately 12 business corporations organized and existing under the laws of this state, having as their corporate name-Allstate or All States, or some differentiation of that, such as a hyphen in the middle or two words.

Mr. Grissom:
We object to that as irrelevant and immaterial.

The Court:
Well, you can agree to Mr. Grissom there, put them in the record. They are not insurance companies?

Mr. Newman:
No, sir, they are not insurance companies.

Mr. Grissom:
Well, I take it they are irrelevant and immaterial to the issue in this case. I don't want to make a speech, but I could state a reason for my objection.

The Court:
Call your next witness.

Mr. Grissom:
To which we except.

(Twelve instruments were here marked Defendant's Exhibit No. 5 for identification, consisting of certified copies of articles of incorporation of the following companies; Allstates Securities and Investment Corp.; Allstate Investment Corporation; All States Geophysical Corporation; All States Trading Company, Inc.; All States Automobile Association, Inc.; All States Management Company; Allstate Investment Corporation; Allstate Oil Corporation; Allstate Finance Company; All State Trucking Company, Inc.; All-State Products Company; All-State Distributing Company.)

Mr. Newman:
If the Court please, the Defendant would like to introduce in evidence a certified copy of the Defendant's application to transact life insurance business in the State of Texas.

(The instrument referred to was here marked Defendant's Exhibit No. 6 for identification.)

Mr. Newman:
We would also like to introduce in evidence Defendant's license to transact life insurance in the State of Texas, which we will ask the Reporter to mark as Defendant's Exhibit No. 7.

(The instrument referred to was here marked Defendant's Exhibit No. 7 for identification.)

Mr. Newman:

We would also like to introduce in evidence a certified copy of a letter addressed to the Board of Insurance Commissioners, from Thompson, Knight, Wright and Simmons, attorneys, for Allstate Insurance Company, and Allstate Fire Insurance Company, protesting Defendant's name.

(The instrument referred to was here marked Defendant's Exhibit No. 8 for identification.)

Mr. Newman:

We would also like to introduce in evidence a certified copy of a letter from the Board of Insurance Commissioners to Thompson, Knight, Wright and Simmons, dated November 8, 1955, replying to that protest, and advising that no relief had been granted.

(The instrument referred to was here marked Defendant's Exhibit No. 9 for identification.)

Mr. Newman:

We would like to introduce in evidence a certified copy of the official minutes of meeting of the Board of Insurance Commissioners, held on November 8, 1955, denying the relief which Allstate Insurance Company and Allstate Fire Insurance Company, requested.

(The instrument referred to was here marked Defendant's Exhibit No. 10 for identification.)

The Court:
All right.

Mr. Newman:
If the Court please, the Defendant would like to introduce in evidence a deposition taken by written interrogatories of the Hon. Joe S. Moore, Insurance Securities Director for the State of Texas.

"Direct Interrogatory No. 2: Where are you employed, what is your position and how long have you been so employed?

"Answer: I am employed as Director of the Insurance Securities with the Texas Board of Insurance Commissioners in Austin, Texas, and have been so employed since the Securities Division was established September 1, 1955.

"Direct Interrogatory No. 3: What are the duties of your position?

"Answer: My duties include supervising of the staff of the Insurance Securities Division in processing applications for the public sale of insurance securities in Texas, recommendations to the Board of Insurance Commissioners regarding the sale and price of such securities, the licensing of insurance securities dealers and salesmen, and the supervision and direction of investigations of complaints regarding possible violations of the Insurance Securities Act in any regard. The staff and I are responsible to the Board of Insurance Commissioners.

"Direct Interrogatory No. 4: Does All States Life Insurance Company, a Texas corporation, have a permit to sell its common stock (no par value) within the State of Texas for $5.25 per share, issued under the Texas Insurance Securities Act?

"Answer: Yes.

"Direct Interrogatory No. 7: Do you know of any complaint which has been made to the Board of Insurance Commissioners of the State of Texas to the effect that any person interested in the sale of stock of All States Life Insurance Company has represented that said company is affiliated or connected in any way with Allstate Insurance Company or Allstate Fire Insurance Company or Sears, Roebuck & Company?

"Answer: No. A search of the files of the Insurance Securities Division fails to reveal any such complaints.

"Direct Interrogatory No. 10: Do you know of any instance or instances of confusion in the minds of the public between All States Life Insurance Company and any of the following named companies: Allstate Insurance Company, Allstate Fire Insurance Company and Sears, Roebuck & Company?

"Answer: No.

"Cross Interrogatory No. 9: Have you heard of any complaint or report that a person purchasing stock in All States Life Insurance Company purchased the same under the impression that he was purchasing stock in Allstate Insurance Company or a subsidiary of Sears, Roebuck & Company?

"Answer: No."

Mr. Newman:

May it please the Court, we would like to next read the written interrogatories of Mr. Robert Fagg, Robert O. Fagg.

"Direct Interrogatory No. 2: Please state your occupation and profession.

"Answer: Attorney.

"Direct Interrogatory No. 3: Please state whether or not on or about June 29, 1955, and July 1, 1955, you were employed in the office of the Attorney General of the State of Texas.

"Answer: Yes.

"Direct Interrogatory No. 5: Please state whether or not on or about June 29, 1955, you received from the Board of Insurance Commissioners of the State of Texas original Articles of Incorporation of All States Life Insurance Company to be examined by you on behalf of the Attorney General.

"Answer: Yes.

"Direct Interrogatory No. 6: Please state whether or not on or about June 29, 1955, you examined the original Articles of Incorporation of All States Life Insurance Company.

"Answer: Yes.

"Cross Interrogatory No. 5: If you have testified that you have ever been employed by the office of the Attorney General, please state whether, when you were so employed, it was the custom, function or practice of that office to give any consideration to the names of proposed insurance companies and the similarity or dissimilarity thereof to the names of other insurance companies.

"Answer: It is the practice of the Attorney General's Office to examine charters and amendments and approve them as to form only; that is that the company under consideration does in fact have a name."

Mr. Grissom:

Now, if Your Honor please, we object to the question.

The Court:
Overrule the objection.

Mr. Grissom:
To which we except.

Mr. Newman:
(reading) "Answer: It is the practice of the Attorney General's Office to examine charters and amendments and approve them as to form only; that is, that the company under consideration does in fact have a name."

Mr. Grissom:
We object to the answer. to which we except.

Mr. Newman:
(reading) "Cross Interrogatory No. 6: If you have testified that you have ever been employed by the office of the Attorney General, please state whether, when you were so employed, it was the duty or responsibility of the Attorney-General's office to pass upon or approve names of new insurance companies."

Mr. Grissom:
We object to that as calling for a conclusion.

The Court:
You put in the other side; you put in the same questions yourself. Overrule your objection.

Mr. Grissom:
To which we except.

Mr. Newman:
The answer is yes.

"Cross Interrogatory No. 7: If you have testified that you have ever been employed by the office of the Attorney General, please state whether, when you were so employed, you ever gave advice, suggestions, or recommendations to the Board of Insurance Commissioners of the State of Texas as to the similarity or dissimilarity of names of insurance companies."

Mr. Grissom:
We object to that for the same reasons.

Mr. Newman:
The answer is yes.

Mr. Grissom:
Same objection.

Mr. Newman:
All right, would the Reporter kindly note that the answer to No. 6 was "No" rather than "Yes".

Mr. Carrington:
I didn't hear what you just said, Frank.

Mr. Newman:
Mr. Kendall called my attention to the fact—

Mr. Kendall:
It was Cross Interrogatory.

Mr. Newman:
Which read as follows:

"If you have testified that you have ever been employed by the office of the Attorney General, please

state whether, when you were so employed, it was the duty or responsibility of the Attorney-General's office to pass upon or approve names of new insurance companies."

I erroneously stated that the answer was "Yes"

The answer was "No".

Thank you, Mr. Kendall.

"Cross Interrogatory No. 11: If you have testified that you have ever been employed by the Office of the Attorney General, please state whether, when you were so employed, it was the function or practice of the Board of Insurance Commissioners of the State of Texas to pass upon the similarity or dissimilarity of names of insurance companies."

Mr. Grissom:

We object to that as being repetitious, one, and in the next place, it calls for an opinion and a conclusion.

The Court:

Overrule the objection.

Mr. Grissom:

To which we except.

Mr. Newman:

The answer is "Yes".

"Cross Interrogatory No. 12: If you have testified that you have ever been employed by the Office of the Attorney General please state whether, when you were so employed, it was the function or practice of the Office of the Attorney General of the State of

Texas to pass upon the similarity or dissimilarity of names of insurance companies."

Mr. Grissom:
Your Honor please, we object to that for the same reasons.

Mr. Newman:
The answer is "No."

"Cross Interrogatory No. 13: If you have testified that you have ever been employed by the Office of the Attorney General, please state whether, when you were so employed, you were ever advised by any official or representative of the Board of Insurance Commissioners that the difference in the lines of insurance to be written by All States Life Insurance Company and those being written by Allstate Insurance Company and/or Allstate Fire Insurance Company distinguished the first mentioned company from either or both of the last mentioned companies."

The answer is "Yes".

"Cross Interrogatory No. 14: If you have answered the preceding Interrogatory "Yes", please give the full particulars of such advice and the name of the party who so advised you.

"Answer: It is my recollection that I either called Mr. Paul Connor, Legal Examiner for the Board of Insurance Commissioners, or that he called me and so advised.

"Cross Interrogatory No. 15: Please state whether or not, to your knowledge, the Board of Insurance Commissioners of the State of Texas has ever approved or passed upon the name of 'All States Life Insurance Company'."

The answer is "Yes".

Mr. Grissom:
We object to that, it calls for an opinion and conclusion.

Mr. Newman:
Mr. W. C. Jennings.

Mr. Carrington:
Just take the stand, Mr. Jennings.

W. C. JENNINGS, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Newman:
Q. Would you state your name, please, sir?
A. W. C. Jennings.
Q. And where is your home, please, sir?
A. Montgomery, Alabama.
Q. What is your occupation?
A. I am President of All States Life Insurance Company of Montgomery.

The Court:
Now, wait a minute. You say your name is W. C. Daniels?

The Witness:
Jennings.

The Court:
Huh?

The Witness:
Jennings.

The Court:
Jennels?

Mr. Newman:
(spelling) J-e-n-n-i-n-g-s.

The Court:
Jennings?

Mr. Newman:
Yes.

The Court:
Yes.

(By Mr. Newman):

Q. Now, Mr. Jennings, are you from Montgomery, Alabama?

A. Yes.

Q. Are you the president of All States Life Insurance Company of that city?

A. I am.

Q. Would you please tell us when that corporation was organized?

A. In October of 1928.

Mr. Newman:
Would you mark that, please?

(The instrument referred to was here marked Defendant's Exhibit No. 11 for identification.)

(By Mr. Newman):

Q. Mr. Jennings, I will hand you what has been marked as Defendant's Exhibit No. 11, and ask you if you can identify that, please, sir.

A. Yes, sir, that is a copy of the original articles of incorporation of Allstates Life Insurance Company of Montgomery.

The Court:

You think it is necessary for you to have that in your record, gentlemen? It is all agreed to by everybody in the pleadings.

Mr. Grissom:

I don't think so.

Mr. Newman:

We will be happy to omit it if Counsel will stipulate that the company was incorporated as of that date.

Mr. Grissom:

I will stipulate.

Mr. Newman:

Now, Mr. Jennings, a stipulation has been signed by Counsel that the company of which you are president is licensed in this State and in the District of Columbia, and that stipulation gives the date, a period of time during which your company was so licensed. Would you tell us, please, whether or not it is correct in your opinion?

The Court:

I hate to see you pad your record, gentlemen.

Mr. Newman:
All right, sir.

Mr. Grissom:
Let me see. We have already stipulated that, Your Honor please. It is all in writing here.

The Court:
No reason whatever; it is in each of your briefs, your pleadings.

Mr. Newman:
Fine, sir.

(By Mr. Newman):
Q. Now, Mr. Jennings—

Mr. Newman:
Mark this 12, please.

(The instrument referred to was here marked Defendant's Exhibit No. 12 for identification.)

(By Mr. Newman):
Q. I would like to hand you what has been marked as Defendant's Exhibit No. 12, and ask you if you can identify that, sir?
A. Yes, sir.
Q. Would you please tell us what it is, sir?
A. Well, that is a policy that was actually issued by the company, All States Life Insurance Company, of Montgomery, as of May 20, 1929.
Q. Does that policy contain a series mark or trademark upon it, Mr. Jennings?
A. Yes, sir, on the front, or on the back.

Q. And has that trademark been in constant use by All States Life Insurance from 1929 to the present date?

A. Yes, sir.

Q. Does it now appear on the letterhead of the company?

A. Yes, sir.

Q. And has it at all times since 1929 appeared on the letterhead and on the policies?

A. It has, yes.

Q. Thank you, sir. Now, Mr. Jennings, will you please tell us the history of All States Life Insurance Company of Montgomery, Alabama, what is the business history, what business did it write, how did it grow, and so forth?

A. Well, the company started business in January of 1929, writing ordinary life insurance, and I believe about—

The Court:

Don't go to sleep on us, now. He asked you to tell us.

A. About five or six years after that—

The Court:

After what?

A. After it started business in 1929, writing ordinary life insurance, it went into the industrial life insurance, and those two classes of business, it has been writing since that time.

The Court:

All right.

(By Mr. Newman):

Q. In 1950, did the company have approximately eighty million dollars of life insurance in force?

A. At the end of 1950, yes, sir.

Q. Was that business reinsured to another company?

A. Yes, sir.

Q. Was that reinsured to United Insurance Company?

A. United Insurance Company, yes.

Q. Did it own at that time approximately eighty percent of the stock of All States Life Insurance Company?

A. The stock was owned by the Investors Finance and Thrift Corporation, an affiliated company.

Q. Affiliated with United Insurance Company?

A. Right.

Q. Then, after that reinsurance was effected, was part of that business reinsured back to your company?

A. Yes, it was.

Q. Approximately when was it reinsured back?

A. Approximately 1952.

Q. Was that approximately four million dollars of life insurance, Mr. Jennings?

A. No, that was not at that time, did not amount to that much. Later on some other business was reinsured.

Q. How much did it amount to at that time, please, sir?

A. I believe it was approximately a million dollars.

Q. Then, did you acquire additional business through reinsurance?

A. Yes, in 1953, I believe it was.

Q. Was that from a reinsurance through the Old South Life Insurance Company?

A. Right.

Q. How much business does your company have in force at the present date, please, sir?

A. Between four and five million dollars.

Q. Has your company continually written life insurance since it was organized?

A. Yes.

Q. Has your company at all times had agents since that period of time?

A. Yes.

Q. Always issued policies?

A. Yes.

Q. Is it now engaged in writing life insurance?

A. Yes, sir.

Q. Does it have agents?

A. Yes, sir.

Q. All right.

Mr. Newman:

Please mark it.

(The instruments referred to were here marked Defendant's Exhibits Nos. 13 and 14 for identification.)

Mr. Grissom:

May I see them?

Mr. Newman:

Surely.

Mr. Grissom:

We object to the introduction in evidence of Exhibits D-13 and D-14 on the grounds that they are irrelevant and immaterial to any issue in this case.

The Court:
I don't know what is going on, gentlemen, among you. There hasn't been any offer of anything yet.

Mr. Grissom:
Well—

(By Mr. Newman):
Q. Mr. Jennings, I will hand you what has been marked as Defendant's Exhibit No. 13 and ask you if you can identify it, please, sir?
A. Yes, sir.
Q. Would you please tell us what it is?
A. That is an assignment executed by me as President of All States Life Insurance Company to All States Life Insurance Company of Texas.
Q. And by that, you assigned what, sir?
A. The right to the use of the name "All States Life" in the State of Texas.
Q. And would you identify Defendant's Exhibit No. 14?
A. Yes, sir.
Q. What is it, please, sir?
A. That is an assignment of emblem here, whatever you call that, the right to use that in the State of Texas.
Q. Are you referring to the mark contained in Exhibit "A" attached thereto, sir?
A. Right.
Q. Thank you, sir.

Mr. Newman:
May we offer these in evidence?

Mr. Grissom:
We object to—

The Court:
They are already in the pleadings, gentlemen; they are already in the amended answer of the Defendant, both of those documents. I overrule the objection, and allow them to go in evidence again, but the rules make it unnecessary, because they are already in the pleadings.

Mr. Grissom:
We except to the Court's ruling.

The Court:
Somebody is going to appeal this case, and somebody is going to appeal and pay for the costs, you know. Anything else?

Mr. Newman:
Yes, Your Honor.
Would you mark these, please, sir?

(The instruments referred to were here marked Defendant's Exhibits 15 and 16 for identification.)

(By Mr. Newman):
Q. Mr. Jennings, would you please state whether or not you entered into a contract with B. F. Biggers for a sale of the majority of your stock to Mr. Biggers?
A. I did.
Q. And is this that contract, please, sir?
A. Yes, it is.

Q. And did you enter into a supplemental agreement extending the time of the performance of that contract until June 26, 1956?

A. I did.

Q. And is that the extension agreement, sir?

A. It is.

Q. Thank you, sir.

The Court:

All right.

Mr. Grissom:

We object to both of those exhibits because they are irrelevant and immaterial.

(By Mr. Newman):

Q. Now, Mr. Jennings, would you please state approximately how many policy holders your company had in 1950?

A. I would say approximately 200,000.

Q. Are those policies still outstanding in the hands of policy holders all over the state where you were licensed?

A. Well, that I wouldn't know, unless they—

The Court:

You have already offered testimony that that was also taken over by the Illinois Company.

(By Mr. Newman):

Q. Mr. Jennings, when the Illinois Company took them over, did they send out assumption certificates to be attached to the policies?

A. I assume they did, that was a part of the contract.

Q. Now, Mr. Jennings, when were you first contacted and by whom, with reference to a sale of your company to the Texas company that is the Defendant in this cause?

A. It was sometime during the first two weeks of July of last year, by Mr. Charles Dunn, Louisville, Kentucky.

Q. Do you know of any instance of confusion that has existed between your company and Allstate Insurance Company, the Plaintiff in this action?

A. You mean at any time?

Q. At any time, sir.

A. I only recall one instance where we were sued or at least we were served with a notice of a suit under a policy which it later developed was issued by the Chicago Company.

Mr. Newman:
That is all.

The Court:
Any cross?

Mr. Grissom:
We dont have any cross.

Mr. Newman:
Mr. Fred Korth, please.

Mr. Jennings:
Is that all?

The Court:
Well, the lawyers will have to excuse you; it is all right with the Court.

Mr. Carrington:
Yes, may Mr. Jennings be permanently excused?

Mr. Grissom:
Yes, sir.

FRED KORTH, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Newman:

Q. Would you please state your name, sir?

A. Fred Korth, (spelling) K-o-r-t-h.

Q. (spelling) K-o-r-t h?

A. Right.

Q. Mr. Korth, what is your occupation?

A. I am executive vice president of the Continental National Bank of Fort Worth.

Q. Have you had any other business connections in the past ten years?

A. Yes, I have, I formerly was an active practicing attorney in Fort Worth, subsequent to that time, in 1951, I went to Washington and became Deputy Counsellor of the Army, and subsequently was Assistant Secretary of the Army.

Q. Mr. Korth, are you a director of the Defendant company in this case?

A. I am.

Q. Before you accepted that position as a director of this company, did you make any investigation as to the business reputation of the president of the company, Mr. B. F. Biggers, and of the other directors?

A. I did.

Q. And what did that investigation reveal, sir?

A. Mr. Biggers first saw me about last July, at which time he asked me to become a director of the All States, Life Insurance Company. I told him that since I did not know him, I would have to have some references to check up on him, and his integrity and reputation. He gave me as references Mr. Fred Florence, the president of the Republic National Bank, and Mr. Ben Wooten, the president of the First National Bank. I came to Dallas and saw Mr. Wooten, did not see Mr. Florence, but saw Mr. Oscar Bruce, a senior vice president of the Republic Both of these told me that—

Mr. Grissom:

We object to that.

The Court:

I don't think that is admissible.

Mr. Newman:

All right, sir.

Mr. Grissom:

I object to it as being irrelevant and immaterial.

The Court:

Yes, I sustain the objection.

(By Mr. Newman):

Q. Mr. Korth, who were the other directors of the All States Life Insurance Company?

Mr. Grissom:

We object to that, the personnel or directory is not at issue.

The Court:
I don't see that that has anything to do whatever with this case; the integrity has not been attached by the plaintiff, of either personnel or company.

Mr. Newman:
May I ask this question, sir?

(By Mr. Newman):
Q. Did you make any investigation as to Mr. Biggers' experience in the life insurance industry prior to this?
A. I did.
Q. Would you summarize it for us, very briefly, sir?

Mr. Grissom:
We object to that, whatever it is.

The Court:
I object in the interest of time, in the interest of a proper record.

Mr. Newman:
No further questions.

The Court:
Any cross?

Mr. Grissom:
That is all.

Mr. Newman:
Mr. W. M. Beavers.

Mr. Carrington:
Mr. Korth will be excused, Mr. Grissom?

Mr. Grissom:
Yes.

Mr. Carrington:
Have you been sworn?

Mr. W. M. Beavers:
No, sir.

Mr. Newman:
Take the stand, Mr. Beavers, right over here.

W. M. BEAVERS, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Newman:
Q. Would you please state your name?
A. W. M. Beavers.

The Court:
Beavers?

The Witness:
Beavers.

Q. (spelling) B-e-a-v-e-r-s?
A. Yes, sir.
Q. W. M. Beavers?
A. Yes, sir.

Q. Mr. Beavers, what is your occupation, please, sir?

A. I am in the banking business.

Q. With what bank are you connected?

A. Merchants State Bank.

Q. Are you the president of that bank?

A. Yes, sir.

Q. Are you a director of the Defendant company of this case?

A. Yes, sir.

Q. Do you know of any instance of confusion or misrepresentation that has transpired between the parties to this suit?

A. No, sir.

Q. Has anyone ever asked you if there was any connection between All States Life Insurance Company, and either of the plaintiffs in this case?

A. I dont recall of any; they might have in a joking way.

Q. No one seriously?

A. No, sir.

Mr. Newman:

Would you mark this, please, sir?

(The instrument referred to was here marked Defendant's Exhibit No. 17 for identification.)

The Court:

Really now, gentlemen, let's go on and try the lawsuit.

Mr. Newman:

All right, sir.

The Court:
You can put me on the stand, too.

Mr. Newman:
Perhaps we can save some time by stipulation. We have here the stock purchase order of the company which each individual stock subscriber was required to sign, we have the policy form, the stock certificate form, we have the letterhead form, and all of them identified the Defendant company as one of Dallas, Texas.

Mr. Grissom:
I will stipulate with him there.

The Court:
Well, he will agree with you.

Mr. Newman:
That will be fine; no further questions.

Mr. Carrington:
We put those items that we just stipulated in evidence.

Mr. Newman:
Mr. B. F. Biggers.

B. F. BIGGERS, having been previously sworn, resumed the stand, and testified further as follows:

Direct Examination.

By Mr. Newman:

Q. Would you please state your name, sir?

A. B. F. Biggers.

Q. Where do you live, Mr. Biggers?

A. In Dallas.

Q. And how long have you lived here, sir?

A. Well, continuously, since 1947.

Q. How long have you been in the life insurance business?

A. Since 1928.

Q. With what other companies have you been associated?

A. I started with the Gulf States Life Insurance Company in Dallas, selling insurance, and then I went with the Republic Mutual Life Insurance Company of Dallas which name was subsequently changed to Republic Life Insurance Company.

Mr. Grissom:

If Your Honor please, I hate to be objecting all of the time, but it occurs to me this is irrelevant and immaterial; we object to it for that reason.

Mr. Newman:

If the Court please, we are endeavoring to identify that this witness is an expert in the insurance field, that he has had great experience.

The Court:

All right, go ahead. Let's try to try your suit—

Mr. Newman:
Yes, sir.

The Court:
—so as to be as saving on your clients as possible.

(By Mr. Newman):
Q. All right, Mr. Biggers, did you organize your Republic Mutual Life Insurance Company?
A. Yes, sir.
Q. Is that the company now known as Republic National Insurance Company here in Dallas?
A. Yes, sir.
Q. Did you organize Republic Life Insurance Company in Oklahoma City?
A. I did.
Q. Now, do you know of any instance of confusion or misrepresentation that has ever occurred with reference to the company of which you are the president here and the plaintiffs in this lawsuit?
A. I do not.
Q. Why did you choose the name "All States Life Insurance Company"?
A. When the company in Alabama you referred to awhile ago, that Mr. Jennings was president, when that was organized, that was while I was in the Republic in Dallas.

Mr. Grissom:
Well, Your Honor please, the reason for doing it would be irrelevant and immaterial; we object to it.

Mr. Newman:
If the Court please, the plaintiffs have alleged that the Defendant was trying to ride on the coat tails of the plaintiff, and trying to copy their name.

The Court:
I know, go ahead, go on, go on.

(By Mr. Newman):
Q. Would you state very briefly, please, sir, why you chose this name?
A. When I went to Oklahoma with that company, I almost named that company, that Oklahoma company, that, but I didn't, because I expected and hoped to merge that company back into the one that I organized in Dallas, and it was merged back into the one I organized in Dallas.

The Court:
All right.

A. And when I organized this company, I named the company that I started to go with first, because I thought I could take over the Alabama company.
Q. Did you begin negotiations for the purchase of the Alabama company on or about the time that you selected the name for this company?
A. That is correct.
Q. At the time you submitted the name of this company to the Board of Insurance Commissioners for approval, did you submit any other names for approval?
A. I submitted two before this one.
Q. What were they?
A. National Life of America and All America Life Insurance.
Q. Did the Board decline to permit you to use those names?
A. The Board objected to both of them.
Q. How is your stock sold?

A. Through dealers.

Q. Are they independent dealers?

A. All except one; I have one salesman.

Q. Are you now engaged in the completion of your sale of your new issue stock?

A. Last 20 percent, I would say.

Q. Are you presently engaged in selling life insurance to your policy holders?

A. That is correct.

Q. Is that life insurance a special policy designed for stock holders of your company?

A. Yes, sir.

Q. Are you presently engaged in the purchase of the Alabama company you have referred to?

A. I am.

Q. Have you executed an assignment from you personally to the company of which you are the president assigning your rights under that contract to the company of which you are the president?

A. I have.

Mr. Grissom:

The instrument would be the best evidence.

Mr. Newman:

I would be happy to introduce it.

The Court:

Any cross?

Mr. Grissom:

I don't think he has finished, Your Honor.

The Court:

Oh, I thought he had finished.

Mr. Newman:
Mark that, please.

(The instrument referred to was here marked Defendant's Exhibit No. 18 for identification.)

(By Mr. Newman):
Q. Mr. Biggers, we will hand you Defendant's Exhibit No. 18 and ask you whether or not, sir, that is the assignment from you individually to your company of the contract to purchase the Alabama company?
A. It is.
Q. Are you now negotiating in good faith for the purchase of that company?
A. Yes, sir.

Mr. Newman:
No further questions.

Cross Examination.

By Mr. Grissom:
Q. You say All States Life Insurance Company was your third choice for a name—
A. Yes, sir.
Q. —for this company?
A. Yes, sir.
Q. Now, you have sold this stock pretty generally over the State of Texas to a large number of people?
A. That is correct.
Q. I believe you testified in your deposition that you had sold it to seven thousand people?
A. I did not, but the secretary did.
Q. Yes. Well, anyway, that is a fact, isn't it?

A. Well, I presume it is.

Q. Well, that would have to be pretty well distributed among the population, wouldn't it?

A. I presume so.

Q. Yes, sir. That would be about the type of customer that would be attracted by Sears, Roebuck & Company and Allstate Insurance Company, wouldn't it?

A. Well, I couldn't answer that.

Mr. Newman:

Your Honor, I object to that question as calling for an opinion.

(By Mr. Grissom):

Q. Well, you have already testified about the number of shares that you bought.

Mr. Grissom:

All right, that is all.

The Court:

All right.

Mr. Newman:

Mr. Wilbur Tolson.

The Court:

No, we are going to adjourn Court now, gentlemen; we have worked long enough.

Ajdourn Court until 10:00 o'clock tomorrow morning.

(Recess had.)

(An instrument was here marked Plaintiff's Exhibit No. 31 for identification.)

The Court:
No formal orders desired by members of the Bar? If not, you can call your next witness, gentlemen, please.

Mr. Grissom:
If Your Honor please, in the press of the proceedings yesterday, I overlooked covering one point, and as I would like to put Mr. Downey on the stand, I understand there will be no objection to it.

The Court:
Well, you have already rested, the other side is introducing its testimony now.
Anything further for you?

Mr. Carrington:
Yes, we have a witness to call.

The Court:
How is that?

Mr. Carrington:
We have a witness to call.

Mr. Newman:
W. J. Little, take the stand, please.

W. J. LITTLE, JR., being first duly sworn, testified as follows:

Direct Examination.

By Mr. Newman:

Q. Will you please state your name?

A. W. J. Little, Jr.

Q. (spelling) L-i-t-t-l-e?

A. Right.

Q. And where do you live, Mr. Little?

A. In Dallas.

Q. And what is your occupation, please, sir?

A. Securities Dealer.

Q. Are you associated with any corporation that is a securities dealer?

A. Yes.

Q. And which one is that, please?

A. Continental Trust and Securities Corporation.

Q. Are you the president of that corporation?

A. I am.

Q. Has that corporation sold stock of All States Life Insurance Company from July, 1955, to the present date?

A. Yes.

Q. How many shares of that stock has your corporation sold?

A. More than 300,000 shares, a little bit more than that.

Q. How many salesmen do you presently employ for the sale of that stock?

A. About 75

Q. Do you know of any instance of any salesman representing that stock of All States Life Insurance Company as connected with Allstate Insurance Company or Sears, Roebuck & Company?

A. No, sir.

Q. Do you know of any instance where any stock purchaser believed that when he bought stock of All States Life Insurance Company he was purchasing stock of Allstate Insurance Company, or of a company affiliated with Allstate Insurance Company?

A. No, sir.

Mr. Grissom:

We object to that, Your Honor, please; I think that is something that he couldn't know.

The Court:

You used the word "believe"; you don't know what the man believed. You can ask him what he told him.

Mr. Newman:

Thank you, Your Honor.

(By Mr. Newman):

Q. Do you know of any instance where any stock purchaser has complained to you or told your company that when he bought stock of All States Life Insurance Company, he thought that it was the company affiliated with Sears, Roebuck or Allstate Insurance Company?

A. No, sir.

Q. Now, have you used newspaper advertisements in connection with the sale of stock of All States Life Insurance Company?

A. Yes, sir.

Q. Have those newspaper advertisements shown the name and the phbtographs of the officers and directors of All States Life Insurance Company?

A. Some of them, yes, sir.

Q. Have those newspaper ads designated All States Life Insurance Company as a company with a home office in Dallas, Texas?

A. Yes, sir.

Q. And have they designated it as an old line legal reserve life insurance company?

A. Yes, sir.

Q. What has been the principal sales points used by your company in connection with this company's stock?

A. The company's president, the management of the company, and the ability and integrity.

Q. Thank you.

Cross Examination.

By Mr. Grissom:

Q. Your name is W. J. Little?

A. Junior, that is right.

Q. What?

A. W. J. Little, Jr.

Q. You sign your letters W. J. "Jim" Little, Jr.?

A. Sometimes; I am called "Jim", yes.

Q. And this company that you head is called what, now?

A. Continental Trust and Securities Corporation.

Q. Now, when was that organized?

A. March of 1955, in that month.

Q. March of 1955?

A. Yes, sir.

Q. Now, is Mr. Biggers connected with it?

A. No, sir.

Q. Now, you sent out letters to various people over —under the letterhead of All States Life Insurance Company?

A. Yes, sir.

Q. Signed W. J. "Jim" Little, Jr., Securities Director, Houston-Gulf Coast Area?

A. Yes, sir.

Q. Now, did you send out similar letters in the Dallas area?

A. Not that I know of, the ones I signed, I sent to the Houston-Gulf Coast Area.

Mr. Grissom:

I am going to ask the Reporter to mark this letter, consisting of two pages, dated August 22, 1955, as Plaintiff's Exhibit in regular order.

(The instrument referred to was here marked Plaintiff's Exhibit No. 32 for identification.)

(By Mr. Grissom):

Q. I hand you Plaintiff's Exhibit 32 and ask you to tell me what it is.

A. That is an advertising letter selling All States stock.

Q. All right, sir. That was sent—

A. Yes, sir.

Q. —by you?

A. Yes, sir.

Q. Signed as Securities Director, Houston-Gulf Coast Area, of All States Life Insurance Company?

A. Yes, sir.

Q. Now, it reads as follows, and gives a South Main Street, Houston, address, and telephone number?

A. Yes, sir.

Q. (reading) "August 22, 1955. Dear Mr. Jackson." That was somebody on your list?

A. Yes, sir.

Q. A prospect?

A. Yes, sir.

Q. (reading) "We are taking the liberty of enclosing the following documents for your inspection:

"A. The All States Life Insurance Company prospectus, effective August 8, 1955.

"B. A copy of a letter from Mr. Charles E. Dunne of Dunne's International Insurance Reports regarding our president, Mr. B. F. Biggers.

"C. A copy of the dividend record Mr. Biggers achieved as president of Republic Life Insurance Company of Oklahoma.

"D. A specimen subscription order blank.

"Our shares have been very favorably received by the public. Over 80,000 shares have been subscribed to since July 15, 1955.

"Our stock is now $6.00 per share. The price will advance to $7.50 mid-night, Monday, August 29, 1955. Orders received with a post mark later than mid-night of August 29 will not be accepted at the $6.00 price.

"Our shares may be subscribed to on either a cash or a deferred payment basis. The deferred payment plan requires 20% down and the balance may be retired within a period of 24 months.

"If you desire additional information, call collect, Houston, Texas, JA2-5440, and ask for the securities director for the Houston-Gulf Coast area. Collect telephone calls will be accepted providing you ask for the securities director, Houston-Gulf Coast area.

"Trusting you will find the enclosed information interesting, I am

"Very truly yours."

A. Yes, sir.

Q. Now, the prospectus which you sent—

A. Yes, sir.

Q. —it did not, did it, Mr. Little, inform the prospective purchaser of stock that one million and a half shares of All States Life Insurance Company, which was half of all of the authorized shares, had been sold to Mr. Biggers and Mr. Biggers' interest for twenty cents a share, did it?

A. No, it only spoke of the public sale, that is right.

Q. Now, then, you didn't tell them that. You held out to them the bait that the stock was now $6.00 per share, and will advance to $7.50 by mid-night, Monday, August 29, 1955. Now, that is a sales gimmick, isn't it?

A. I don't know what you mean.

The Court:

What are you trying to do, Counsel? You read the letter, and you know what it says. Now, you want to air to the Court what it means. I will hear you later on when you argue your case.

Mr. Grissom:

That is all.

The Court:

No use to take the time.

Mr. Grissom:

I offer Plaintiff's Exhibit 32, and all other Plaintiff's Exhibits.

The Court:

Any questions?

Re-Direct Examination.

By Mr. Newman:

Q. Mr. Little, does your company have a contract with Defendant life insurance company?

A. Yes, sir.

Mr. Newman:

Will you mark that, please, sir?

(The instrument referred to was here marked Defendant's Exhibit No. 19 for identification.)

The Court:

I have done my best to try to keep this record down, gentlemen; I don't see why we want to continue again.

Mr. Newman:

Let's waive introducing this, Your Honor, if Counsel will stipulate that the contract specifies—

The Court:

What is this?

Mr. Newman:

Your Honor, I was attempting to introduce a contract showing that his company is an independent contractor, and not an employee of the company.

The Court:

Well, ask him that.

Mr. Newman:

Thank you, sir.

(By Mr. Newman):

Q. Mr. Little, will you please state whether or not the Continental Trust & Securities Corporation is an independent contractor in connection with its sales of stock for the All States Life Insurance Company?

A. We are an independent contractor.

Mr. Newman:

That is all.

The Court:

Call your next witness.

Mr. Newman:

If it please the Court, the Defendant at this time would like to read—

Mr. Carrington:

May Mr. Little be excused permanently?

Mr. Grissom:

Certainly.

Mr. Newman:

The Defendant would like to read four written interrogatories propounded of the Plaintiffs in this case. We have no further witnesses, and the answers of the Plaintiffs to these written interrogatories signed as of May 7, 1956.

"Written Interrogatory No. 9: Does either of the plaintiffs know of any corporation, partnership, or sole proprietorship now or heretofore transacting business within the United States of America, having any of the following names as all or any part of the name under which it conducts business: Allstate, All-

states, All-State, All-state, All-States, All State, All States, State, States, All.

"Answer: Yes.

"Written Interrogatory No. 10: If the answer to interrogatory No. 9 is in the affirmative, state the name, address and business conducted by each such corporation, partnership, or sole proprietorship."

Mr. Newman:

The answer to interrogatory No. 10 is a lengthy one—

Mr. Grissom:

If Your Honor please, that is merely a list of the names of companies that use the name Allstate in some form in it. We object to it; it is just cluttering the record.

Mr. Newman:

Our purpose in introducing it is that the name of the Alabama Corporation, All States Life Insurance Company, is not included in this list, and we feel that the omission is significant.

Mr. Grissom:

Well, Your Honor, please—

The Court:

These are interrogatories you propounded to the other side?

Mr. Newman:

Yes.

The Court:

Go ahead and read them.

Mr. Newman:

(Reading) "Answer: By the very nature of things, these Plaintiffs could not know whether they knew of all of the businesses which might be using any of the names referred to: These Plaintiffs can only answer with respect to such names as may have come to their attention. The following is a list of the names and addresses of a great many businesses using the name 'Allstate' or a similar name which have come to the immediate attention of Plaintiffs. Plaintiffs' records do not reflect the type of business conducted by these businesses, though in many instances the name itself is explanatory."

If the Court please, I will not read the addresses of these companies, but just the name, because there are approximately a hundred of them, I believe.

The Court:

Well, you have told me how many; that is all right.

Mr. Newman:

All right, fine. And then the answer concludes:

"Plaintiffs do not believe that the above list is in any sense a complete list or comprehensive list of the corporations, partnerships or sole proprietorships in the United States using the word 'Allstate' or any similar word for business purposes. The above list constitutes those which have come to the immediate and direct attention of the Plaintiffs. In respect to the above list, the Plaintiffs, or either one or the other of them, have taken in every instance a positive step to protect its rights in the use of the name 'Allstate' and 'Allstate Insurance Company' under the law of the United States and of the respective states, except where Plaintiffs did not regard the infringement in

the particular instance as being worth the effort and expense in taking appropriate legal action."

And the other Interrogatory we would like to read, Interrogatory No. 31:

"Does either of the plaintiffs know of any party whomsoever who now utilizes or has heretofore utilized any symbol in any manner similar to the trademarks referred to in plaintiffs' complaint?

"Answer: These Plaintiffs know of no one who is now using, or has used in the past, the service mark of Plaintiff Allstate Insurance Company consisting of the word 'Allstate' superimposed over a map of the United States, except the Defendant in this lawsuit."

Mr. Newman:
Thank you, Your Honor.

The Court:
Defendant rests?

Mr. Newman:
Yes, sir.

Mr. Carrington:
One moment. Defendant rests.

The Court:
Both sides close?

Mr. Grissom:
I would like to recall Mr. Downey for one or two questions.

The Court:
How is that?

Mr. Grissom:
I would like to call the witness Downey for one or two questions; it won't take over two minutes.

The Court:
Well, this is only in rebuttal?

Mr. Grissom:
Well, I am asking leave of the Court to—

The Court:
If this is in rebuttal, if you have a witness in rebuttal, well, you can call him.

Mr. Grissom:
Well, it is not in rebuttal, Your Honor.

The Court:
All right.
Do you care to argue your case, gentlemen?

The Court:
This case was filed on December 6, 1955, and summons was returned executed on December 7. From that time on, various pleadings were filed by both the defendant and the plaintiff consisting of answers and amendments, interrogatories, and the Rules of Procedure is pretty much covered and exhausted by these various pleadings. On May 14, the Defendant's Amended Motion to Dismiss was filed, and on May 21, that motion was acted on by the Court and overruled. The grounds of that motion to dismiss was that there was no jurisdiction in this Court because the State Court, the State law, gave a forum to which the plaintiffs might go if they desired relief as to

the name which had been granted to the defendant and its assignors by the Insurance Commissioner. That motion was overruled because the Court could not recognize a State Statute which would take away from the Court its federal jurisdiction for litigation growing out of a diversity of citizenship.

The Court has been somewhat surprised by the continuous fattening of the record by the parties, especially the plaintiffs, and has done its best to keep that record down, but has not succeeded very well. Forty-two different witnesses and exhibits have been presented by the plaintiffs; exhaustive briefs have been filed by both sides consisting of original briefs and amendment briefs and all sorts of briefs which I now hand to the Clerk for inclusion with the papers in the case.

From this exhaustive and somewhat tiresome trial and brief reading, keeping in mind the necessity of the Court's retaining that which was applicable to the issues involved, I find as facts, gentlemen, that the plaintiffs, Sears, Roebuck and Company, and the Allstate Insurance Company, are engaged; and have been engaged, in the use of the word "Allstate" upon insurance which was neither fire nor life insurance, but was accident and casualty insurance; that the name "Allstate" has been used by the Sears, Roebuck and Company upon a multiplicity of merchandise which it sells in its various stores throughout the northern and central and southern portions of the United States, such as automobile tires, and automobile accessories, and that the business in which it is engaged, or in which both plaintiffs are engaged, is in no sense the business in which the defendant is engaged; the defendant All States Insurance Company is named under the permission of the State In-

surance Commissioner, who, under the State law, has that right; that the name "All States" was presented; the plaintiffs objected; the Commissioner overruled that objection, supported by the Attorney General of the State of Texas, and "All States" was granted as the name for the defendant company; that it is engaged only in the life insurance business, and is not engaged in any way in the sale of merchandise.

I further find as a fact that there is no confusion, nor reason for confusion, between what the defendant is engaged in, and what the plaintiffs are engaged in.

As a conclusion of law, gentlemen, I can see no equity whatever in favor of the plaintiffs. It would be most inequitable, and the chancellor would have both eyes and ears and heart closed if it would find that any relief in this case is entitled to the plaintiffs.

PLAINTIFF'S EXHIBIT NO. 8.

In the United States District Court for the Northern District of Texas, Dallas Division.

Sears, Roebuck & Company, a corporation, et al., Plaintiffs,

vs. Civil Action No. 6318.

All States Life Insurance Company, a corporation, Defendant.

Stipulation Between the Parties with Reference to the Introduction of Certain Testimony.

It is stipulated between the Plaintiffs and the Defendant as follows:

1. Exhibits 1 to 47, inclusive, attached hereto are true and correct copies of trade-marks registered in

the United States Patent Office by Plaintiff, Sears, Roebuck & Company, for the purposes and classes and upon the dates designated therein. All of these registrations contain an outline map of the United States without interstate boundary lines shown. All of these registrations have "Allstate" superimposed on the outlined map in block print, as shown in Exhibits 1 through 47. All of these trade-marks have expired, except as may have been replaced by the registrations referred to in Paragraph 2, below;

2. Exhibits 48 through 70, attached hereto, are true and correct copies of trade-marks registered in the United States Patent Office by Plaintiff, Sears, Roebuck & Company, for the purposes and classes and upon the dates designated therein. Thirty-three (33) of Exhibits 48 through 70 are intended as replacements for certain of the registrations referred to in Exhibits 1 through 47 of Paragraph 1, above; as represented on a schedule of "Allstate" trade-mark registrations prepared by Plaintiff, Sears, Roebuck & Company, and attached hereto, marked Exhibit 71;

3. Exhibits 72 and 73, attached hereto, are true and correct copies of trade-marks registered in the United States Patent Office by Plaintiff, Allstate Insurance Company, for the purposes and classes and upon the dates designated therein;

4. The production of the original, signed and sealed certificates of trade-mark registration, issued by the Commissioner of Patents of the United States, is waived with respect to the trade-marks referred to in Exhibits 1 through 73, attached;

5. Defendant does not hereby admit the validity of any such trade-mark registration, nor does it hereby admit that any registered trade-mark is incontestable. Defendant does not hereby waive any of the defenses asserted in its First Amended Answer. No stipulation is made hereby with reference to the trade-mark referred to as Exhibit "A" to Plaintiffs' Original Complaint;

6. It is stipulated that Plaintiffs are engaged in interstate commerce and have been during all of the times material to the subject of this lawsuit and at least since the organization of Allstate Insurance Company in 1931;

7. It is stipulated that Plaintiff, Sears, Roebuck & Company, was incorporated under the laws of the State of New York, and that Allstate Insurance Company was incorporated under the laws of the State of Illinois in 1931;

8. It is further stipulated that Plaintiff, Allstate Insurance Company, obtained licenses to transact casualty insurance business from the following states upon the following dates:

Alabama	10-13-38
Arizona	9-14-38
Arkansas	4- 2-35
California	10-23-31
Colorado	9-18-34
Connecticut	12-27-35
Delaware	3-24-32
Dist. of Columbia	4-21-32
Florida	2- 1-39

Georgia	2-29-32
Idaho	4- 1-47
Illinois	4-15-31
Indiana	7-24-34
Iowa	11-20-34
Kansas	8-30-34
Kentucky	10- 3-46
Louisiana	11-14-38
Maine	6-11-32
Maryland	5- 3-32
Massachusetts	11- 8-51
Michigan	8- 1-34
Minnesota	9-15-34
Mississippi	6- 9-48
Missouri	8- 7-31
Montana	4- 1-34
Nebraska	6-28-32
Nevada	6-29-48
New Hampshire	8- 6-37
New Jersey	3- 5-32
New Mexico	7- 9-47
New York	3-26-36
North Carolina	11- 9-38
North Dakota	6- 4-32
Ohio	5- 2-32
Oklahoma	8-24-37
Pennsylvania	4-29-36
Oregon	8-10-35
Rhode Island	1-10-39
South Carolina	5-28-32
South Dakota	5- 1-32
Tennessee	8- 1-32
Texas	7- 1-36
Utah	12- 1-31
Vermont	1- 6-36
Virginia	9-30-38

Washington	9-27-34
West Virginia	9-22-38
Wisconsin	9-17-36
Wyoming	11-10-37

9. It is stipulated that All States Life Insurance Company, an Alabama corporation, was licensed to transact life insurance business, as follows:

Alabama	1929-1956
District of Columbia	1942-1952
Florida	1935-1952
Georgia	1931-1952
Indiana	1942-1952
Kentucky	1935-1952
Louisiana	1943-1952
Maryland	1946-1952
Mississippi	1931-1952
Ohio	1935-1952
Pennsylvania	1946-1952
Tennessee	1931-1952
Texas	July 13, 1937-February 28, 1938
Virginia	1946-1952

10. It is stipulated that all of the instruments introduced into evidence at the time of the hearing on the Motion to Dismiss this cause may be reintroduced in the trial of this case on its merits by any party hereto without producing the original of any such instrument or further identification thereof, and that any additional certified copies of records obtained by either of the parties from the Insurance Department of the State of Alabama or of the State of Texas may be introduced at the trial of this case without the production of the original thereof or further identification thereof.

Dated: June 11, 1956.

(S.) (Illegible),
Attorney for Plaintiff,

(S.) FRED G. NEWMAN,
Attorney for Defendant.

PLAINTIFF'S EXHIBIT 21.

Belden Associates—Marketing Research.

Joe Belden Alex Louis Walter Bowles Ralph Bubis

What the Dallas Public Associates with "Allstate" and "All States Life Insurance Co."

A Study Conducted for
Thompson—Knight—Wright & Simmons.

May 1956

T-663-842

351 West Jefferson Boulevard, Dallas 8, Texas
Whitehall 1-0381

1903 South Shepherd Drive, Houston 19, Texas,
Jackson 2-3588.

Vallarta 1, Mexico 4, D.F., Tel. 36-85-78

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To Help You Interpret This Report.

Objective.

This study was conducted at the request of the law firm of Thompson-Knight-Wright & Simmons. The objective of the study as presented to us by the client was to determine what the Dallas public associates with the brand name, "Allstate", and what confusion if any, may exist between "Allstate" and "All States Life Insurance Company".

Methods

The selection of the methods for the study, their application, and analysis of the results was left entirely to us.

We have interviewed a representative sample of persons living in homes listed in the latest Dallas telephone directory. According to the Southwestern Bell Telephone Company, 80 per cent of Dallas homes are equipped with a telephone. This high percentage of telephone saturation permits ready contact with a reasonably accurate cross section of the public; in our opinion, the results of the survey would not be materially affected by adding interviews with a sample of persons living in homes not equipped with telephone.

The interviews were conducted over the telephone by ten of our interviewers who were personally instructed for this study. None of the interviewers was told who was sponsoring the survey.

The interviews followed the questionnaire appended at the end of this report. This form was pre-tested in fifty interviews before the survey was launched to determine its workability, understandability, and freedom from bias. Interviewers were forbidden to suggest any replies or to prompt the respondents in any manner that might suggest an answer.

A sample of 1,000 interviews was made. The telephone numbers called were selected in a strictly systematic manner. Neither the designers of the sample nor the interviewers had a choice in the selection once the procedure was established. These were the instructions followed by the interviewers (each was assigned a section of the directory):

"1. Beginning with your first page, copy on a questionnaire the name, address, and telephone number of the first residential number, beginning at the bottom of the page, and going up, in the first column. Then in a similar way take a name from the second and third columns.

"2. Keep your questionnaires in the order in which you copied names. Call the numbers in this order the first time you go through them.

"3. Mark on the questionnaire the final result of the call. If you interviewed someone, circle that word. If you were not able to make an interview because phone was busy or no adult was present, circle the 1st, 2nd, etc.

"4. Make as many as four calls (original call and three callbacks) at each number, at different times or different days. . . . Abandon a number only after four calls. When you abandon a number, circle reason.

"5. Stop when you have made 100 completed interviews."

When the numbers drawn into the sample through the above system were not enough to complete the required number of interviews (after a maximum of four calls at each number), the interviewers were instructed to take the next residential number up the respective columns.

Each interviewer was given a quota of men and women to interview. The sample used in the analysis of the results contains 52.7 per cent women and 47.3 per cent men, which is within 0.3 percentage points of the sex distribution for Dallas found by the 1950 U. S. Census.

The interviews were made primarily with male and female heads of households; other adults in the homes were included when the man or woman of the house was not available. No children were interviewed.

The sample selection methods used insure representativeness of the interviews with adults in telephone-equipped residences and are subject to statistical measures of precision. That is, it is possible to compute the plus-or-minus variance within which the results may be trusted. The probability in this case is that the odds are twenty to one that none of the results in this survey would vary more than 4 or 5 percentage points from the results that would be obtained from a complete census of the public surveyed. In most instances, the various would be less.

Timing

The interviews were conducted between May 23 and 27, 1956, inclusive.

Results

The findings from the study are presented in the pages that follow. Each table is headed by the question or questions on which it is based. All percentages have been rounded to the nearest whole number.

Both the tabulations and this report have been prepared by us, without help or suggestions from the client. The questionnaire filled out by the interviewers are on file in our offices and are available for inspection.

BELDEN ASSOCIATES,
Marketing Research.

June 1, 1956.

Public's Associations with "Westinghouse" and "Kodak"

The questions below, the first on the questionnaire, were used simply to acquaint the respondents with the nature of the interview. The results have no bearing on the purpose of the study other than to provide a comparison of responses between two well-known brand names ("Westinghouse" and "Kodak") and "Allstate."

Question 1: "I'm helping with a survey on brands—I'm not selling anything."

Question 2: "What comes to your mind when I say the brand name, "Westinghouse".

Question 3: "What does the brand "Kodak" mean to you?"

Associations with "Westinghouse"	
Replies pertaining to household appliances	87%
Replies pertaining to electricity or electrical goods	4
Betty Furness	2
Miscellaneous other replies	4
Don't know or no answer	3
Total	100%
Base—number of interviews	1000
Association with "Kokak"	
Replies pertaining to photography	90%
Miscellaneous other replies	3
Don't know or no answer	7
Total	100%
Base—number of interviews	1000

Public's Associations with "Allstate"

Question 4: "What does 'Allstate' mean to you?"	
Sears or Sears Roebuck	8%
Sears or Sears Roebuck insurance	3
Sears or Sears Roebuck tires, batteries, or accessories	5
Other Sears or Sears Roebuck products	1
Insurance	35
Tires, batteries, or accessories	30
Miscellaneous other answers	5
Don't know or no answer	13
Total	100%
Base—number of interviews	1000

In summary—

17 per cent mentioned Sears or Sears Roebuck in one way or another.

38 per cent mentioned insurance in one way or another.

35 per cent mentioned tires, batteries, or accessories in one way or another.

82 per cent gave replies directly or indirectly referring to Sears, Roebuck or products or services bearing the Allstate brand.

18 per cent mentioned nothing relating to Sears Roebuck or products or services bearing the Allstate brand.

It should be considered that persons simply mentioning insurance, tires, batteries, accessories or other products may have been able to identify them with Sears, Roebuck, but interviewers were instructed not to press or prompt for elaboration of the replies.

Public's Association of Allstate Insurance with Sears Roebuck

Question 5: "If you wanted to buy Allstate insurance, where would you go?"	
Sears or Sears Roebuck	70%
Other definite answers (not Sears or Sears Roebuck)	3%
Indefinite answers	4
Don't know or no answer	23
Total	100%
Base—number of interviews	1000

Public's Familiarity with All State Life Insurance Company

Question 6: "Have you ever heard of the All States Life Insurance Company?"	
Believe they have heard of it	44%

Say they have not heard of it	50
Don't know or no answer	6
Total	100%
Base—number of interviews	1000

Public's Knowledge of Ownership of All States Life Insurance Company

Question 7: "Who would you say owns and operates the All State Life Insurance Company?"

Sears or Sears Roebuck	28%
Biggers or Doak Walker	1
Stockholders	1
Miscellaneous other replies	2
Don't know or no answer	68
Total	100%
Base—number of interviews	1000

A tabulation of the 44 per cent who on Question 6 declared they believed they had heard of the All States Life Insurance Company shows this about their opinion on the ownership of the company:

37 per cent say Sears or Sears Roebuck.
3 per cent say Biggers or Doak Walker.
1 per cent say stockholders.
3 per cent gave other miscellaneous replies.
56 per cent did not know or gave no answer.

PLAINTIFF'S EXHIBIT NO. 26.

Recorded telephone calls received for All States Life:

August 4—Long distance call from San Antonio for a Mr. Biggers.

August 5—Call from Wall Street Journal.

August 5—Call from Jim Davis, stockbroker inquiring about All States Life Insurance ompany.

August 5—Request for prospectus.

August 8—Call from individual wanting a Mr. Starr.

August 8—Inquiry from individual wanting to know if there was connection between All States Life and Allstate Insurance Company. Telephone No. F08-6467.

August 9—Call from L. D. Sherman.

August 12—Call for Mr. Biggers.

August 15—Inquiry.

August 16—Individual wanting Mr. Biggers called from Waxahachie.

August 18—Local call for Mr. Biggers.

August 22—Local call for Doak Walker.

August 22—Local call concerning interest in stock.

August 22—Local call for Mr. Biggers.

August 22—Local call for Doak Walker.

August 24—Call from local life insurance company.

August 26—Adolphus Tower Building called—local.

August 29—Local call for Mr. Biggers.

September 8—A Mrs. Durham called for All States Life.

September 9—Long distance call from Lubbock, looking for a Mr. Eldridge Rayburn.

September 13—Payment on camera rented by someone with All States Life.

September 13—Louis Pate calling Miss Sowers, P.B.X. attendant at All States.

September 15—John Hogan calling Mr. Biggers.

September 16—Mrs. Reid calling about payment on stock she had purchased from All States.

September 20—Long distance call for a Mr. Stearer.

September 22—Call for All States, wrong number given.

September 29—Long distance call from San Antonio calling Mr. Reynolds.

September 29—Call for Miss Sowers—caller unknown.

October 8—Long distance call from Corpus Christi, Texas, calling President or Vice President of All States Life.

October 7—Long distance call from Pecos, for Mr. Biggers.

October 10—Call for Mr. Biggers (caller unknown.)

October 10—Mrs. Savage (Telephone Co.) calling Mr. Lon Stearer, Sec.

October 13—Call for Mr. Biggers (Caller unknown.)

October 17—Long distance call from Corpus Christi for Mr. Stearer.

October 24—Local call for Mr. Stearer.

October 24—Mrs. Glenn Scott called about stock.

October 24—B. W. Jones called wanting prospectus on insurance.

October 28—Local call for Miss F. Bozeman.

October 28—Local for Mr. Biggers, President.

November 2—Local for All States Life Insurance Co.

November 4—Local for Mr. Childress.

November 8—Local for Mr. Stearer.

November 8—Sears employe wanting to know if stock had been put up for public sale.

November 8—Local call for Ross Kelly.

November 16—Mr. Yates package at railway.

November 16—Call for Mr. Jack Lynch.

November 18—Mrs. Cliff of the Wall Street Journal.

November 28—Long distance call for Mr. Biggers.

December 5—Call from Fort Worth for Mr. Biggers.

December 5—Mrs. Sowers long distance call—Chicago.

December 9—Local call for Mr. Biggers.

December 30—Long distance call for Mr. Biggers.

June 6—Local call from Frank Ocnaschek.

June 7—Local call for Mr. Biggers.

Mail Received by our company addressed to All States Life:

July—Received Bank Statement from Republic Nat. addressed to our office—Allstate Ins. Co.

August 9—8 pieces.

September 9—4 pieces.

September 10—7 pieces.

September 12—5 pieces.

September 13—6 pieces.

September 14—3 pieces.

September 15—4 pieces.

September 16—3 pieces.

September 19—1 piece.

September 20—4 pieces.

September 21—3 pieces.

September 22—6 pieces.

September 23—1 piece.

September 26—3 pieces.

September 27—3 pieces.

September 28—4 pieces.

September 29— 1 piece.

September 30—2 pieces.

October 1—3 pieces.

October 3—8 pieces.

October 4—5 pieces.

October 5—3 pieces.

October 8—3 pieces.

October 10—4 pieces.

October 11—2 pieces.

October 12—2 pieces.

October 13—2 pieces.

October 14—1 piece.

October 15—1 piece.

October 18—1 piece.

May 4, 1956—1 piece.

May 7—4 pieces.

May 8—4 pieces.

May 9—1 piece.

May 11—4 pieces.

May 15—2 pieces.

May 16—1 piece.

May 17—1 piece.

May 18—1 piece.

May 19—2 pieces.

May 21—2 pieces.

May 22—1 piece.

May 23—1 piece.

May 24—4 pieces.

May 25—2 pieces.

May 28—1 piece.

May 29—1 piece.

May 31—3 pieces.

June 4—13 pieces.

June 5—6 pieces.

June 6—1 piece.

June 7—5 pieces.

June 8—6 pieces.

June 9—7 pieces.

These records were kept under my supervision by the supervisor in charge of the individual units. They are correct.

Through March, 1956, we received two or three telephone calls per day.

From time to time people enter our office looking for All States Life Insurance Company.

(Signed) JACK WISENER,
(Jack Wisener),
Operating Division Manager.

JW:jr

DEFENDANT'S EXHIBIT 10

Form A-119

Certificate
State of Texas
(Seal)

Board of Insurance Commissioners

No. 1135

It Is Hereby Certified That the instrument which is hereunto attached is a true, full and correct copy of
Official Minute
Of Meeting
Board of Insurance Commissioners
Austin, Texas

Date November 8, 1955

Subject Considered: All States Life Insurance Company, Dallas, Texas. Complaint Against Use of Corporate Name,

now on file in and forming a part of the records of this Department.

In Witness Whereof I have hereunto subscribed my name officially, and have hereon impressed my Seal of Office at the City of Austin, in the State of Texas, on this 15th day of May, A. D. 1956.

(S.) (Illegible),
(Seal) Chairman,
Board of Insurance Commissioners.

Minute No. File

Official Minute
of Meeting
Board of Insurance Commissioners
Austin, Texas
Date November 8, 1955

Members present: Voted
Garland A. Smith, Chairman
Mark Wentz, Commissioner
J. Byron Saunders

Subject Considered:
All States Life Insurance Company, Dallas, Texas
Complaint Against Use of Corporate Name
General remarks and action taken

On this 8th day of November, 1955, came on for consideration a complaint filed by Allstate Insurance Company and Allstate Fire Insurance Company on October 31, 1955, said complainants alleging that a

Texas corporation known as All States Life Insurance Company is unfairly competing through the use of its corporate name; that "All States Life Insurance Company" is so similar to the name "Allstate Insurance Company" that it creates confusion in the mind of the public; that the use of the name "All States Life Insurance Company" constitutes a fraud upon the public; that the use of said name is in violation of Title 15, Section 1126, U. S. C.; that All States Life Insurance Company has appropriated and is infringing the trade-mark "Allstate"; that All States Life Insurance Company is representing to the public that it is affiliated with and is a part of Allstate Insurance Company; and that the use of the name "All States Life Insurance Company" violates Article 2.02 of the Texas Insurance Code. Complainants protest the action of the Board in granting a license to All States Life Insurance Company and request the Board to require said company to change its corporate name.

It is shown to the Board that said All States Life Insurance Company filed articles of incorporation on July 1, 1955, that a certificate of authority was granted to said company on July 21, 1955, and that Issuer's Permit No. 1 was granted to said company on September 30, 1955, by the Board of Insurance Commissioners under authority of the Texas Insurance Securities Act. It is further shown to the Board that All States Life Insurance Company has engaged in activities under its corporate name since the date of organization.

Now therefore, premises considered the Board finds that it is without jurisdiction to grant the relief re-

quested by complainants, and complainant's request is hereby denied.

(S.) GARLAND A. SMITH,
Chairman,
(S.) MARK WENTZ,
Commissioner,
(S.) J. BYRON SAUNDERS,
Commissioner.

Defendant's Exhibit #13—Assignment from All States Life Insurance Co., of Ala., to All States Life Insurance Co., of Texas the right to use the name of "All States Life" in the State of Texas, dated 7/1/55; (Same as Exhibit "C"); Omitted from the Printed Record, being heretofore copied at page 49.

Defendant's Exhibit #14—Assignment from All States Life Insurance Co., of Ala., to All States Life Insurance Co., of Texas the right to use the name of "All States Life" in the State of Texas", dated 7/1/55, (Same as Exhibit "D"); Omitted from the Printed Record, being heretofore copied at page 52.

* * * * * * * *

DEFENDANTS EXHIBIT 15.

Agreement.

In consideration of the mutual benefits hereunder, it is agreed between W. C. Jennings, of Montgomery, Alabama (hereinafter called "Seller") and B F. Biggers, of Dallas, Texas (hereinafter called "Purchaser") as follows:

1.

Seller warrants that each of the following statements is true and correct as of the date hereof and will be true and correct at the performance date mentioned in Paragraph 3 below:

(a) All States Life Insurance Company (hereinafter called "All States") is duly organized and existing under the laws of the State of Alabama and is duly licensed to issue life insurance policies in said state.

(b) All States has 120,000 shares of $1.00 par value stock authorized and outstanding, each of which shares has been fully paid for and is non-assessable.

(c) All States has no surplus or premium income notes, debentures, or bonds outstanding.

(d) All States is not a party to any contract other than those entered into in the normal course of the life insurance business usually conducted by All States.

(e) The December 31, 1955 Annual Statement of All States fairly represents the financial condition of All States as of said date and the results of its operations in the calendar year 1955, in accordance with good insurance accounting principles.

(f) The use of the corporate name of All States or any part thereof has not been enjoined, and the company is not obligated or committed to change its name, discontinue the use thereof, dissolve, or be liquidated.

(g) All States has no employment contract with any officer, agent, subagent, or employee which cannot be terminated by the company without penalty or loss.

2.

Seller warrants to Purchaser that at the performance date mentioned in Paragraph 3 below, the following statements will be true and correct:

(a) All States will have a capital of $120,000.00 and a surplus of $30,000.00.

(b) All States will have no insurance business in force except that all of the business known as thrift and endowment policies which are in force as of the date hereof (approximately $1,000,000 in volume of life insurance with approximately 500 policyholders) will be in force at the said performance date, subject to increases or decreases thereof in the normal course of business usually conducted by All State, but without any reinsurance or cancellation thereof.

(c) All States will have good title to admitted assets with a value at least equal to its then capital, surplus, reserves and liabilities. The said admitted assets will include the following and nothing else:

(i) Policy loans upon said thrift and endowment business, but not to exceed $20,000.00 in the aggregate.

(ii) First mortgage liens upon real estate in the State of Alabama, which mortgages shall be either Mortgages now owned by All States or upon real es-

tate now owned by All States in fee, which mortgages shall be for a term not to exceed five (5) years, with interest at five percent (5%) per annum and principal and interest payable annually, and each which mortgage shall be in an amount not to exceed sixty percent (60%) of the fair market value of the land covered thereby, and shall be a first and superior mortgage meeting all recommendations of the National Association of Insurance Commissioners and which mortgages shall either be mortgages presently existing in the portfolio of assets of All States or shall be mortgages from Reserve Trust Life Insurance Company, an Alabama corporation, as mortgagor.

(d) All States will have good title to all office furniture, machinery and equipment, policy forms, rate books, records and supplies heretofore used in connection with its business.

(e) All States will have no liabilities of any kind other than the reserves upon the said thrift and endowment business and reserves for unpaid stockholders' dividends, not to exceed $10,072.40 for dividends which were declared no later than 1952; with all other policy liabilities of All States having been assumed by others and all other liabilities of All States having been discharged.

(f) The said thrift and endowment business of All States will not be subject to any renewal commission, except as provided for in the presently existing contracts with C. M. Collins and his subagents, which do not exceed the usual and customary amounts.

(g) All States will not be a party to any litigation, and none will then be threatened against All States.

(h) All Directors and Officers of All States will tender their written resignations to Purchaser.

3.

Seller agrees to sell and Purchaser agrees to purchase 61,812 shares of the said Common Stock of All States. The performance date for said sale shall be any date selected by Purchaser not later than June 5, 1956. Purchaser shall give Seller written notice of said performance date at least five (5) days in advance thereof by telegram addressed to Seller at 2231 Woodley Road, Montgomery, Alabama. The purchase price shall be 61,812/120,000ths of $195,000.00. The place for performance of said purchase shall be the office of All States in Montgomery, Alabama.

4.

At the time of the sale of said 61,812 shares to Purchaser, Seller shall use the entire proceeds of such sale to purchase for cash from All States any mortgages Purchaser may require Seller to purchase from All States. The purchase price for such mortgages shall be the amount of the then unpaid principal balances thereof plus accrued and unpaid interest thereon.

5.

Within seven (7) days after the purchase of the said 61,812 shares by Purchaser, Purchaser will offer

in writing to the other stockholders of All States to purchase their stock of the company for a cash price per share equal to 1/120,000ths of $195,000.00.

6.

Within thirty (30) days after the purchase of said 61,812 shares by Purchaser, Seller will, at the option of Purchaser, cause Reserve Trust Life Insurance Company to trade and exchange mortgages with All States upon the following basis:

(a) Mortgages traded by All States shall be only one or more owned by All States at the time of the said purchase of the said 61,812 shares and shall be only such ones thereof as shall be selected by Purchaser for exchange to Reserve Trust Life Insurance Company.

(b) Mortgages traded by Reserve Trust Life Insurance Company shall be either mortgages theretofore acquired by it from All States or shall be mortgages created at the request of Purchaser upon land acquired by Reserve Trust Life Insurance Company from All States.

(c) All mortgages traded by Reserve Trust Life Insurance Company shall have all of the characteristics described in Paragraph 2(c)(ii) above.

7.

In the event any of the warranties of Seller herein contained shall be or become untrue or breached, then, in addition to all other remedies of Purchaser,

Purchaser shall not be obligated to perform his agreements herein contained. The warranties shall survive the sale hereunder.

8.

In no event shall Purchaser be required to pay more than $195,000.00 for all of the capital stock of All States.

9.

In the event of any controversy between Seller and Purchaser as to the amount of reserves required by law upon the said thrift and endowment business, each shall appoint an actuary and the two actuaries shall appoint a third actuary, and the decision with respect thereto by any two of such actuaries shall be final, conclusive, and binding upon the parties.

10.

Purchaser may assign his rights hereunder to All States Life Insurance Company, a Texas corporation; provided that it assumes his obligations hereunder.

Executed this 6th day of April, 1956.

(S) W. C. JENNINGS,
(W. C. Jennings).

(S.) B. F. BIGGERS,
(B. F. Biggers).

DEFENDANT'S EXHIBIT 18.

Assignment.

Whereas, All States Life Insurance Company is the name of a Texas corporation organized under the laws of the tate of Texas on July 1, 1955 (which corporation is hereinafter referred to as "Assignee"); and

Whereas, All States Life Insurance Company is the name of an Alabama corporation, incorporated under the laws of the State of Alabama on September 29, 1928; and

Whereas, one of the principal purposes in giving the Assignee the same corporate name as that of the aforementioned Alabama corporation was that the President of Assignee contemplated the purchase by Assignee of the stock or business of the Alabama corporation and has been negotiating for such purchase for several months; and

Whereas, pursuant to said negotiations, a contract was executed between W. C. Jennings and B. F. Biggers on or about April 6, 1956, by the terms of which, B. F. Biggers agreed to purchase and W. C. Jennings agreed to sell a majority of the capital stock of the Alabama corporation; and

Whereas, the said contract was executed by B. F. Biggers in his individual capacity, and not on behalf of Assignee, because it had not yet been decided by Assignee whether it would be in the best interests of Assigne to purchase the stock or the insurance business of the said Alabama corporation; and

Whereas, the said contract contains the following provision:

"Purchaser may assign his rights hereunder to All States Life Insurance Company, a Texas corporation; provided that it assumes his obligations hereunder." and

Whereas, it is not believed in the best interests of Assignee that Assignee purchase the stock of the said Alabama corporation:

Now, Therefore, in consideration of the mutual benefits hereunder, it is agreed between Assignee and B. F. Biggers as follows:

1.

B. F. Biggers does hereby bargain, sell, transfer, assign and convey unto Assignee all of his rights, titles and interests in and to the said agreement dated April 6, 1956, and he does warrant that he has not previously assigned said rights to any other party.

2.

Assignee does hereby assume all of the obligations of B. F. Biggers in or under the said agreement dated April 6, 1956, and agrees to indemnify him from responsibility therefor.

Executed this 24th day of May, 1956.

ALL STATES LIFE INSURANCE COMPANY, a Texas corporation,
By (Illegible Signature),
Vice-President,
(S.) B. F. BIGGERS,
(B. F. Biggers).

DEFENDANT'S EXHIBIT 1.

Sears Trade Names—Following is a list of trade names that have been established under Sears Trade Name policy:

Allstate, Ann Barton, Baton, Beckwith, Biltwell, Boyville, Charmode, Coldspot, Country Club, Country Club, Country Inn, Craftsman, Cross Country, David Bradley, Dunlap, Elgin, Fairloom, Farm Master, Fashion Tailored, Fraternity Prep, Gale, Gold Bond, Happi-Time, Harmony House, Hearthside, Hercules, Heritage, Homart, Honeylane, Honeysuckle, J. C. Higgins, Jeepers, Kenmore, Kerrybrooke, Kerry-Teen, Lyric, Maid of Honor, Mast -Mixed, Orvin, Peggy Kellogg, Pilgrim, Roebucks, Royal Purple, Sears Approved, Silvertone, Thrift-Craft, Tower, Tradition, Wearmaster, Workmaster, Yorkshire.

Sears Registered Trade Names

Although all of the following registrations were in effect at the time this book was published, many of them are inactive and all inactive names must not be reinstated until a check has been made with the Editorial Division, Department 744:

A.

Acion, Action Aires, Admira, Airstream, Aladdin, All-Hites, Allstate, Angel, Ann Barton, Argosy, Armored Crotch.

B.

Baby-Soft, Baby Sunshine, Baton, Baycrest, Bayside, Beauciaire, Beautifilm, Belfast, Bellefair, Better-Bilt, Big Chief, Biltwel, Blue Jack, Bob Burnham, Boygards, Boyville, Briargate, Brision, Brookmere, Budget Home.

C.

Cambay, Cambridge, Carefree, Carvex, Casca-Bile, Cellu-Fluffs, Challenge, Champlain, Charmode, Chatfield, Circle S Ranch, Class-Mate, Clingtex, Co-Ed, Coldspot, Colony, Color Bank, Color-Mates, Color-Perfect, Commander, Companion, Compensation, Convincer, Copy-King, Corona, Country Club, Covington, Craftsman, Crafty, Cross Country, Crusader, Crysta-Bee, Crystal-Flo, Crystar, Customatched.

D.

Darko, David Bradley, Dearborn Sr., Decorator Styles, Defiance, Della Robbia, Desirables, Dia-Trim, Dorable, Dos-A-Kaps, Downy-Baks, Drum Major, Drum-Master, Dunlap, Dunice, Durawall, Durozone, Dyspelit.

E.

Eclipse, Economy, Econo-Steel, Electroday, Electro-Power, Elgin, Elite, Emblem, Emergex, Engineer,

Ensign Ever Ready, Ever-Sta, Explorer, The, Express Hauler, E-Z Add.

F.

Fairloom, Fairwest, Famoserge, Farm Master, Farm Master, Jr., Fashion Tailored, Fashion Towers, ellowship, Fenimore, Fenwick, Ferndale, Fiberflor, Fire Chief, Flamer, Flatter-ees, Fleet-Tested, Flint-Rock, Floor-O-Leum, Flo-Rite, Flotilla, Fluff Naps, Footease, Forest King, Formease, Four Aces, Francines, Freshman, Furni-Flor, Fuzzy Wuzzy.

G.

Gale, Glenside, Glow, Gold Bond, Gold Crest, Golden Crown, Golden Crown, Goldenrod, Gold Seal, Goliath, Green Grip, Guest Chamber.

H.

Handiman, Handituft, Handy-Wear, Happi-Time, Harmony House, Healthmaster, Hearthside, Heatmaster, Hercules, Heritage, Hi-Lo-Matie, Hinsdale, Homart, Honesty, Honeylane, Honeysuckle, Honor Bilt, Humiderator, Hy-Test.

I.

Idle Hour, Imperator, Infrarod, Invorene.

J.

Jamarettes, J. J. C. Higgins, Jeepers, Jubilee.

K.

Keeps-M-Up, Ken-Kart, Kenmore, Kens, Ken-Timer, Kerrybrooke, Kitchen Glow, Kleanal, Kleen-Air, Kleen Line, Kleerbrite, Kool-Est.

L.

Lace Craft, Laddie, Lady Bernice, Lady Fair, Lady Janis, Lake Shore, Lancet, Launderite, Layer Naps, Lazi-Glaze, Lectracar, Lifetime, Lightmaster, Lintgon, Little Belle, Little Giants, Log-King, Long Life, Love Song, Lucerne, Luxury Sleep, Lyric.

M.

Magic Seal, Maid of Honor, Many-Way, Marvel, Marvel-Bel, Master-Art, Master Craftsman, Master-Mixed Long-Life, Mastiff, Mercury, Merit, Meteor, Minute Man, Mira-Cold, Mirro-Glo, Modernart, Moth-Off, Motorobe, Multi-Kaps, My Baby's.

N.

Nation-Alls, National Call, The, National Pet, The, National Success, The, National Time Alarm, Needle-Thrift, Nobility, Nufior.

O.

Oakcrest, Oaklawn, Ora-Septine, Orvin.

P.

Pacemaker, Par-Tee, Peggy Adair, Peggy Kellogg, Penn Medal, Penn Vita, Peoples Choice, The, Perma-

Thrift, Phillis, Pilgrim, Pinemaint, Plaisance, Plasti-Wear, Plumpy, Portex, Positive Wear, Posture-Fit, Potentate Power Chief, Power Master, Powermax, Power Shifter, Prolong Your Days With Restful Nights, Protection, Protex-All, Putter Pants.

Q.

Quality Mixed.

R.

Rainsoft, Ranch Rose, Ranch '77, Regal, Relia-Bilt, Reputation, Rinsink, Rival, Roadmaster, Robin Hood, Robotimer Roebucks, Rollator, Roly Poly, Rosedown, Rosetex, Roto Seal, Rough and Ready, Rowdies, Royal, Royal Purple, Royalton, Rufix, Rural.

S.

Safti-Cap, Sail-Along, Samson, Sandy Nevin, Sapphire, Satellite, Satinette, Sea Ho, Sealed in Oil, Seralon, Searian, Searmont, Searolite, Searosole, Sears Approved Searset, Searsette, Searspride, Sears Straight-Line, Distribution Saves You Money, Sero-co, Sero-Cote, Sero-Glo, Sero-Lux, Sero-Tex, Sero-Tone, Sero-Tung, Sero-Var, Serowool, Service, Service Man Servistan, Servistex, Servistwist, Shod Rite, Silvertone, Silvertone Tru-Phonic, Simplicity, Sleep-tite, Slumber Queen, Slumbersound, S. Marino, Snowonder, Softies, Softwood, Souvenir, Spacemaster, Spic and Span, Sportload, S. R., Sta-Trim, Steadfast, Streamline Style King, Style Square, Sun-Ray, Super Allstate, Super Drops, Super-Kaps, Super-Therm,

Supertone, Super-Wall, Supertwist, Supramatic, Surfrenu, Syntronic.

T.

Tach-A-Piece, Taperlite, Tell Tale, Texmere, Thermoil, Thrift Book of a Nation, Thrift-Craft, Tiger Rose, Top-Line, Tower, Tradition, Trail Hitter, Tramonti, Treasure-Craft, Tried and True, Trim-O-Lites, Tri-Reme, Tru-Point, Tu-Tex, 20th Century, Twin-Flex, Twin Power, Twin Top.

U.

Unipilot.

V.

Vachelie, Vaikyr, Vanderbilt, Vee Line, Vegedrator, Velmere, Velofleece, Velvedown, Velvet Tuft, Visi-Bak, Visi-Matic.

W.

Wearmaster, Webster, Wembley, White-View, Windjammer, Windsor, Witchcraft, Wonderstretch, Woodguard, Woolcrest, Workmaster, Workrite.

Y.

Yorkshire.

Z.

Zephyr, Zonatrol.

DEFENDANT'S EXHIBIT NO. 3.

Insurer's Permit for Insurance Securities Board of Insurance Commissioners of the State of Texas:

No. L Fee: $3,775.20

This permit is permissive only and does not constitute a recommendation or indorsement of the securities permitted to be issued.

Effective: Sept. 30, 1955 Expires: Sept. 29, 1956
The State of Texas
Board of Insurance Commissioners
Insurance Securities Division

Know All Men By These Presents:

That Under the Provisions of Section 5 of the Insurance Securities Act Approved June 1, 1955, and Pursuant to an Application Filed by:

All States Life Insurance Company (Applicant)

(A Registered Dealer) (The Issuer) a permit is hereby granted covering the following described securities:

Insurer: All States Life Insurance Company

Incorporated In: State of Texas

Principal Office: Dallas, Texas

Number of Shares or Units: 719,085 common stock

Price Per Share or Unit: $5.25

Maximum Aggregate Offering: $3,775,196.25

The Applicant herein is to prepare and forward to the Board of Insurance Commissioners, Securities Division, Austin, Texas, such periodic reports on sale of securities covered by this permit as the Board may require.

Signed this 13th day of October, 1955.

BOARD OF INSURANCE COMMISSIONERS OF TEXAS,

By JOE V. MOORE,

(Seal) Director, Insurance Securities Division.

Important Notice:

This permit must be surrendered to the Board of Insurance Commissioners, Insurance Securities Division, Austin, Texas, by the holder thereof when:

Same has expired by its terms

The securities covered by this permit have been sold

It shall be unlawful for any dealer or issuer or applicant named herein to use this permit in connection with any sale or effort to sell the securities herein registered.

DEFENDANT'S EXHIBIT 4.

(Dallas—page 16)
All-State Distribg Co.
2411 Ross, Rivrsde-1295
238 Sunset, WHitehl 1-1142
1303 E. Main, ANdrw 2-7779

All State Moving & Strge
2022 S. Lamar, HAmitn 8-1309
All States Life Ins. Co.
5630 Dyer, FQrest 8-6467

All States Sales Co
2623 Love Field Dr ELmhrst-0418

All-Steel Eqp Inc
ofc 3556 Colgate, EMersn-3566
(Dallas—page 18)

Allstate Adjustors
2200 McKinney Av, S.ering-2804

Allstate Glass Co
902 Ross, RAndiph-5513

Allstate Ins Co.
Claim Ofc 212 N. St. Paul, STering-5751
Regional Ofc 212 N. St. Paul, STering-5751
Sales Ofcs—
5334 Ross Av, UNion-4234
1409 S. Lamar, PRospct-4927
611 W. Jefferson, WHitehl 3-4100
212 N St Paul, STering-5751

Allstates Trailer Court
200 W Clarndn, WHitehl 6-0478
(St. Louis—page 28)

Allstate Distribrs Liquor
6341 Olive, PArkw 7-5000

Allstate Ins Co
Claim Dept 6617 Clayton Rd, PArkw 5-6200
Telephone Answered 24 Hours Daily
Sales Offcs
6617 Clayton Rd, PArkw 5-6200
2408 N Kingshway, FOrest 1-1000
3708 S Grand, PRspct 6-6110
7412 Manchstr, STring 1-1710
E St L Ofc 1001 State, UPton 5-1000
E St L District Sales Office, Spivey Bldg, UPton 3-1323
E St L District Claim Office, Spivey Bldg, UPton 3-5595
If no answer call, EXprss 7-3662
(Miami—page 13)

Allstate Air Conditioning & Heating
791 NW 20 St., 9-7046

Allstate Exterminating Co
525 Perviz Av, MU 8-3424

Allstate Ins Co
Sales Ofcs
13337 NW 7 Av NMia, 84-2873
Coral Gables 3655 Coral Wy, HI 8-1472
Miami 1300 Bsc Blvd, FR 3-1565
Claims Ofc

2138 Bsc Blvd, 9-1688
Nights, Sundays & holidays dial 9-1688
If no answer call, 82-8523

Allstate Realty
7198 Bird Rd, MO 7-8811

All-State Television Serv
1283 NW 27 Av, NE 4-4971
(Cleveland—page 37)

All State Beauty Supply Company
2068 E 4, MAin 1-3345

All-State Detective Agncy Inc
401 Euclid, SUperor 1-3677

All-State Driver Training Schl
3674 Fulton, Shadysd 9-0062

All State Foto Co
1633 Supr NE, TOwer 1-6739

All-State Realty
15033 Pearl, CEntr 8-7351

All State Scrap Metal Co
1913 Orange, CHery 1-4372

All State Supply Co
2068 E 4, MAin 1-3345

All States Freight Inc
2981 E 34, DImnd 1-6200

All States Sanitation & Serv Co of Cleve
2424 Euclid, MAin 1-9797

All States Serv Co
2424 Euclid, MAin 1-9797
(Cleveland—page 39)

Allstate Bldg & Supply Co
6801 Euclid, HEnderson 2-1909

Allstate Foundation The
Guildhall bg., CHery 1-0410

Allstate Ins. Co.
Regional Ofc Guildhall bg., CHery 1-0410
Claim Div, Guildhall bg., CHery 1-0410
Sales Ofcs
Guildhall Bg., CHery 1-0410
8501 Carnegie, SWeetbr 5-2233
8501 Carnegie, RAndolph 1-6900
10900 Lorain, CLerwtr 1-3100
10900 Lorain, CLerwtr 1-8951
Hipp Bg Anx, CHery 1-5656
Pearl & W 130, VIctory 3-6600
Pearl & W 130, VIctory 3-7000

Allstate Whsle Co
Hipp Bg Anx, SUperior 1-5135

Allstates Restrnt
2903 Brkpk, SHadysd 9-1170
(Baltimore—page 15)

Allstate Construction Corp.
2111 Lindn Av, LAfayet 3-0030

Allstate Freight Inc
1240 Nantock, GIlmore 5-3242

Allstate Insurance Co.
Sales Ofc 5000 York Rd, TUxedo 9-7582
North Av & Harft Rd, BElmont 5-3969
Claim Ofc 5000 York Rd, TUxedo 9-7582
If no answer call, Mulbry 5-5555

Allstate Sodding Inc
2723 Hartfd Rd, BElmont 5-8629

Allstates Trailer Rental Corp
Pulask Hiway & North Pt Rd, PEabody 2-1300
(Denver—page 13)

All-State Investment Co
729 15, CHery 4-2685

All State Plumbers
845 S Patton Ct, WEst 4-3419

All State Wrecking Co
1295 S Ogdn, PEarl 3-1553
If no answer to above call, ALpine 5-7951
1840 Latimr, ALpine 5-7951

All States Cottages Tourist Cts
11617 E Colfax Av, EMprie 6-1225

All States Credit Assn
Mng Exch B, TAbor 5-2535

All States Electric Co
3535 Larimr, TAbor 5-2802
(Boston—page 23)

All State Ambulance Serv, JAmaica 2-9617
If no answer, HIghins 5-0383
If no answer, TAlbot 5-5025

All State Beef Co
11 Merchants Row, CApitol 7-1872, CApitol 7-2057

All State Tree Serv
34 North, MOnumnt 6-2590

All State Waterproofing Co
5 Ari, KIrkind 7-6252

All States Freight Inc
75 Locust, MYstic 6-8000

All States Movers
41 Russell, SOmrset 6-5310
(Boston—page 26)

Allstate Constr.
185 Lex, EAsBos 7-3077

Allstate Elect Co.
79 Clewly Rd, MYstic 8-0623

Allstate Finance Corp.
6 Beacon, Capitol 7-2303

Allstate Ins. Co.
24 Grove, WElesly 5-5990
Sales, 24 Grove, WElesly 5-5795

Allstate Machy & Equip Co.
30 Meml Dr Avon, BRoctton 8-1780

Allstate Remodeling Co
7 Myrtle, TWinbrk 4-2340

Allstate Sand & Gravel Co Inc
203 New Boston, WOburn 2-1805

Allstates Engineering Co.
830 Saratga, EAsBos 7-6403

All-States Freight Inc.
75 Locust, MYstic 6-8000
(Newark—14—page 14)

All-State Bonding Agcy
786 Brd., MArkt 3-6730
Br 493 High, MItchl 2-3618

All-State Clng Co Inc
89 Frelhysn Av, BIglow 8-8700

Allstate Detective Agcy
28 13th Av, MArkt 3-9388

All State Distributors Inc
463 Chancir Av, WAvrly 3-4900

All State Employ. Agcy
45 Branfo Pl, MArkt 3-7790

All State Glass & Mirror Co
448 S 9th, BIglow 3-4614

Allstate Ins Co
Claim Dept 36 Comrc, MItchl 3-4300
Sales & Serv.
Belvil 165 Wash Av Belvil, PLymth 9-7111

Irvgtn 888 Spgfld Av Irvgtn, ESsex 2-3600
Krny 276 Krny Av Kryn, KErny 3-6565
Nwk 36 Comrc, MItchl 3-4300
168 Eliz Av, BIglow 8-8891

All-State N J Inc
463 Chanclr Av, WAvrly 3-4900

All-State Ofc Supl Co.
502 High, MArkt 4-5577

All State Paintg Co Inc
210 Midland Av Krny, KErny 2-5100

All-State Paving Co.
434 S 13th, BIglow 8-1050

All-State Television Serv. Co.
50 Eliz Av Arl, KErny 2-4159
(Detroit-page 25)

All State Auto Buyers & Sales
8710 Grat, WAlnt 1-3477

All-State Auto Drive-A-Way
8110 Livrnos, TYlr 4-9528

All State Distributing Co
932 Beach, Woodwrd 2-6760

All State Elec Co
8945 Daws, WEbstr 3-2992

All State Industries die
25101 Mound Center Line, SLocm 7-4880

All State Packaging & Processing Co.
1921 E Larnd, WOodwrd 3-0872

All State Pattern Works
1986 Macomb, WOodwrd 5-5040

All State Plmb & Htg
16179 Hamltn HP., TUlsa 3-1831

All State Realty Co.
10101 Mack, WAlnt 3-6300

All State Sales Co.
7620 Grenfld Dea, LUzon 1-4810

All State Sign Erectors
18427 V Dyke, TWinbrk 2-9038

All State Television Service Co.
2471 Gd Riv, WOodwrd 2-2940

All-State Window Cleaning Co
1468 Garfld Lin Pk, DUnkrk 2-7450

All States Painting & Maintenance
2339 E Gd Bl., TRinity 1-1616
(Detroit—page 30)

Allstate Aluminum Window Sales
19457 Jas Couz, BRdwy 3-0313

Allstate Collision
3821 Maple Dea, LUzon 1-2575

Allstate Collision & Auto Wash
3821 Maple Dea, LUzon 1-2575

Allstate Die Cast Corp.
14675 W Warn Dea, LUzon 4-0330

Allstate Electric Co.
8945 Dawes, WEbstr 3-2992

Allstate Ins. Co
Reg. Ofc. 1214 Griswld, WOodwrd 5-7530
Sales Ofcs
1214 Griswld, WOodwrd 5-7530
16300 Harpr, TUxedo 5-9480
15201 Plymth, BRdwy 3-4900
10750 Gd Riv, WEbstr 3-3300
10750 Gd Riv, TExas 4-1180
8000 Grat, WAlnt 5-0100
8000 Grat, WAlnt 3-9322
15001 Wdwrd, TOwnsd 8-1300
15001 Wdwrd, TUlsa 3-2525
3063 Bidie Wya, WArwik 8-6070
3063 Bidie, Wyandotte Avenue, 4-9000
Claims Ofc
Regional Ofc 1214 Griswld, WOodwrd 5-7530
East Side 16300 Harpr, TUxedo 5-9480
North Side 7214 Griswld, WOodward 5-7530
West Side 15201 Plymth, BRdwy 3-4900

Allstates Bar
400 Mich, WOodwrd 4-7447

Allstates Equipment Sales
2980 W Davisn, TOwnsd 9-3456

Allstates Pntg & Maintenance Co.
2339 E Gd Bl., TRinity 1-1616
(Los Angeles—page 43)

All-State Building Maintenance Co.
654 SWestlike, DUnkrk 2-8477

All State Discount Inc
6501 W Sunst, HOlywd 4-0235

All-State Elec Co. Elec Contr
1833 S Main, RIchmd 7-0745

All State Foundry Co.
2231 E 16th, LOgan 5-2419

All-State Ins Co. See Allstate Ins Co
111 W 7th, MAdsn 6-2611

All State Machine & Tool Works
3550 Union Pacific, ANgls 9-9251

All State Metalcraft Co Allstate Metalcraft Co
5966 SWestrn, PLant 1-1877

All-State Sandblasting Co
4511 Expositn, REpblc 3-7779

All-State Sandblasting Co.
56 N Hill Pas v, RYan 1-5374

All State Termite Control
6815 11th Av, PLsnt 9-3333

All State Termite Control
2609 W 76th, PLsnt 9-3333

All-State Trailer & Finance Co.
3650 SnFrndo Rd Gln, CHapmn 5-1682

All State Transportation Co. Inc
1605 Bluff Rd MTB, RAymd 3-6597

All State Vacuum Cleaner Co.
1182 S. Labrea, WEbstr 5-4200

All States Adjustment Co.
257 S. Sprng, MAdsn 6-6655

All States Geophysical Co
811 W 7th, VAndk 4642
If No Ans Call, TRinity 4968

All-States Printing & Publishing Co.
4612 S Westrn, AXminstr 4-2888

All-States Steel Co.
125 N. Hamilton DR BH, OLiv 3-4967
(Los Angeles—page 48)

Allstate Adjustment Co.
257 S Sprng, MAdsn 6-6655

Allstate Au Parts
4103 W Burbnk Brb, VIctria 9-1995

Allstate Building & Insulation Co.
1248 S Fairfx, WEbstr 8-6191

Allstate Construction Co.
1654 N Harvrd, NOrmndy 2-3781

Allstate Discount Inc
650 W Sunst, HOlywd 4-0235

Allstate Insurance Co.
Sales Offices

Compton 1904 Rosecrns, NEwmrk 8-1151

From L.A. Telephones call, NEvada 6-8873

Compton 2100 N Long Bch, NEwmrk 2-5761

East Los Angeles 1127 Goodrch, RAymd 3-5301

Glendale 335 N. Brand, CItrus 1-1157

From L.A. Telephones call, CHapmn 5-3929

Glendale 236 N Contri, CItrus 4-4611

Hollywood 5603 Sta Monica, HOlywd 9-5941

Inglewood 500 E. Manchstr, OREgn 8-2521

North Hollywood 511 Lankrshm, POplr 6-3766

From L.A. Telephones call, STanly 7-2921

Norwalk 13927 S Pioneer, TOrrey 4-7761

Olynpic-Soto 2650 E Olympic, ANgls 8-5211

Pasadena 532 E Colorado, SYcmor 5-4325

Pico-Crenshaw 4550 W. Pico, WEbstr 8-4262

San Fernando 1030 Celis, EMpire 1-7121

San Marino 2491 Huntingtn Dr, SYcmor 5-4325

From L. A. Telephones call, RYan 1-9494

Santa Monica 302 Colorado, EXbrk 3-8246

From L.A. Telephones call, TExas 0-8309

Valley 12121 Victry NH, SUnset 3-8461

Van Nuys 14544 Victry, STate 5-4231

Vermont-Slavson 5820 Vermnt, PLsnt 9-1911

Westwood 1101 Westwd, ERnit 9-8231

Wilshire 1060 Crenshaw, WEbstr 8-3727

District Claim Offices 24 hr service

Compton 1904 E Rosecrns, NEwmrk 8-1151

From L.A. Telephones call, NEvada 6-8873

Night & Holidays call, NEwmrk 8-1151

Serving Compton, Lynwood, Bellflower Artesia-Downey-Norwalk-Paramount-Willobrook

East Los Angeles 1127 Goodrich, RAymd 3-5301

Nights & Holidays call, RAymd 3-5301

Serving East Los Angeles-Montebello-Monterey Park-Pico-Rivera-Whittier

Glendale 335 N Brand, CItrus 1-1157

From L. A. Telephones call, CHapmn 5-3929

Nights & Holidays call, CItrus 1-1157

Serving Burbank-Glendale-Montrose-Sunland-Eagle Rock

North Hollywood 5117 Lankrsham, POplr 6-3766

From L.A. Telephones call, STanly 7-2921

Nights & Holidays call, POplr 6-3766

Serving North Hollywood-Van Nuys-Encino-Northridge-Canoga Park-Reseda-San Fernando-Palmdale-Lancaster

San Marino 2491 Huntington Dr., SYcmore 5-4325

From L. A. Telephones call, RYan 1-9494

Nights & Holidays call, SYcmor 5-4325

Serving Alhambra-Aracadia-Azusa-Covina-El Monte-Duarte-Monrovia-Pasadena-San Gabriel-Temple City

Santa Monica 718 Wilshire, EXbrk 3-8246

From L. A. Telephones call, TExas 0-8309

Nights & Holidays call, EXbrk 3-8246

Serving Santa Monica-Venice-Malibu-West Los Angeles-Culver City-Pacific Palisades-Topanga

Wilshire 1060 Crenshw, WEbstr 8-3727

Nights & Holidays call, WEbstr 8-3727

Serving Hollywood-Wilshire-Beverly Hills

Regional Offices
Long Beach 756 S. Spring, TRinity-1733
Los Angeles 111 W 7th, MAdsn 6-2611

Allstate Ins Co
319 E Hillcrst Blvd, ORegn 8-8949

Allstate Metalcraft Co
8906 S Westn, PLant 1-1877

Allstate Motors
1901 W Manchstr, PLant 8-9238

Allstate Realty Co
8075 Beverly, WEbstr 6-8296

Allstate Truck Rental
8815 S Alameda, LOgan 5-3351

Allstates Adjustment Co.
257 S. Sprng, MAdsn 6-6655

Allstates Petroleum Co
711 W 7th, TRnity 4968
(Manhattan—page 49)

Allstate Air Conditioning Co.
437 E 72, ReGent 7-8840

All State Awning Co.
1577 York Ave, REgent 7-1877

Allstate Beauty Supl Co
529 W 145, FOundtn 8-1860

Allstate Cleaning Contractors
61 W 56, CIrcl 7-4250

Allstate Detective Agency
225 W 57, COlumbs 5-8444

Allstate Detective Bur
114 Chmbrs, WOrth 4-0912

All-State Discount Corp.
19 W 34, BRyant 9-1474

All-State Garment Corp.
205 W 39, LOngacr 4-5975

All-State Glass Corp.
183 Mott, CAnl 6-5232

All-State Home Improvers, Inc.
443 W 50, PLaza 7-3170

Allstate Hosry Sales Inc
385 5 Av, Muryhil 9-0002

Allstate Ins Co
Sales Offices
71 W 23, ORegn 5-8850
370 W 31, LOngacr 5-1795

Claim Office
46 W 24, ORegn 5-8228

Claim & Sales Office
318 E Kingsbrdg Rd, CYpress 5-4500

Main Offices
Bronx 500 Wchestr Av, WHitepls 8-7500
Bkin 71 W 23, ORegn 5-1600
Manhattan 500 Wchestr Av, WHitepls 8-7500
Nassau 71 W 23, ORegn 5-1600
Queens 71 W 23, ORegn 5-1600
Staten Island 500 W Chstr Av, WHitepls 8-7500
Suffolk 71 W 23, ORegn 5-1600
Westchester 500 Wchestr Av, WHitepls 8-7500

All State Leather Co
220 5 Av, MUryhil 6-2244

All-State Luggage Corp.
189 Green, ALgnan 4-4750

All State Machy Corp
185 Cntre, CAnl 6-4190

Allstate Office Equip Co
599 Bway, WOrth 6-2159

All State Reproduction
110 E 23, ORegn 3-1640

All-State Scrap Iron & Salvage Corp.
262 E Houston, CAnl 8-6700

Allstate Sewing Machine Co.
752 6 Av, CHelsa 3-4704

All State Sign Co
3232 Bway, UNivrsty 5-6200

Allstate Uphlstry & Mfg Co
193 Bwry, SPrng 7-4854

All State Vend Corp.
216 W 42, WIscnsn 7-3291

All State Washing Machine Co.
765 E 180, WEingtn 3-1499

Allstates Auto Delivery Inc.
1947 Bway, SUsqhna 7-4300
If No Answer, WAdswth 8-4085

All States Equip Co.
40 E 40, MUryhil 5-2570

All States Freight Inc
400 Duncan. Ask Oper. for Jersey City N J, DEiaware 3-2300

All States Freight Inc
154 Perry, WAtkns 4-5683

All States Freight Inc
500 Duncan Av, Jersey City N J, DIgby 4-4707

All States Holding Corp.
415 E 53, PLaza 3-5550

All-States Realty Corp.
500 5 Av, LAkwna 4-8040

All States Reservation Center
551 5 Av, MUryhil 7-3646
(Chicago—page 36)

All State Auto Body & Fender Reprs
4340 N Kedzie, JUniper 8-9331

All-State Car Co
1701 N Cicero, NAtl 2-4400

All-State Constr. & Roofing Co
7752 Racine, RAdclif 3-3795

All-State Glass Co
3103 W. Harrison, NEvada 2-1121

All State Insulating Co.
See Orange Storm Window Co.

All State Lbr. Co.
2939 S. Cicero, BIshop 2-1033

All State Mailers
207 S Green, STate 2-6593

All-State Painting Service
709 N Wells, MIchgn 2-9832

All State Personnel
30 W Washington, STate 2-9844

All State Piano Co Inc
6657 Shaisted, WEntwrth 6-4200

All State Television Co
177 N. Cicero, COlumbs 1-2170

All-State Tool & Eng Co
3225 N Ravenswd, GRacind 7-6625

All State Uphlstrng Co
4646 Nwestern, LOngbch 1-1475

All-State Vac Stores Inc
2853 E 79, BAyport 1-5000

All State Van Lines Movg
1805 W Lawr, ARdmor 1-4747

All-State Welders
1948 W Grand, SEely 8-1054

All States Auto Body Bldrs Inc
2121 W Lake, SEely 3-1816

All States Beverage Co Inc
2440 Skedze, BIshop 7-5757

All States Credit Adjustment Co.
139 N Clark, STate 2-2742

All States Freight Inc
4043 W 52, PI-REliance 5-2100

All-States Industries Inc
5138 S. Madison, AUstin 7-7427

All-States Photo Co
3045 E 92, BAyport 1-6694

All States Plastic Mfg Co.
2311 W. Schubert, SPalding 2-3331

All States Private Detective Bur
1701 N. Clyborn, WHitehal 3-2155

All States Rent-A-Car Co.
7057 S Stony Isld, BUtrfld 8-1177

All States Sales Corp Ofc
936 N Mich, DElawr 7-6862

All States Serv Inc
1360 N Lake Shr, Supiror 7-1737

All States Trailer Co
482 Centrl Av, Highldpk 2-2050

All States Work Gloves Co
7530 N Sheridan, AMbasadr 2-5760
(Chicago—Page 40)

Allstate Acceptance Assn
10 N Clark, Dearbn 2-6692

Allstate Coin Mach Exch Inc
2317 Nwestern, BElmnt 5-6770

Allstate Constr Co
4614 WLawrence, MUlbry 5-0301

Allstate Finance Co
30 N LaSalle, ANdovr 3-1233

Allstate Heating & Shtmetal Co
4143 1st Lyons, BIshop 2-1327

Allstate Ins Co
Chgo Regional Ofc
7401 Skokie Blvd Skokie-Cornelia, COrnelia 7-6800
Sales Offices
7401 Skokie Blvd Skokie, COrnelia 7-6800
221 N LaSalle, RAndlph 6-5712
403 S State, WAbsh 2-4600
1900 W Lawrence, LOngbch 1-4800
4730 W Irving Pk, MUlbry 5-2121
825 S St Louis, SAcrmnto 2-1000
1601 N Harlan, TUxedo 9-2600
6233 S. Halsted, WEntwth 6-4600
6153 Swestern, HEmlak 4-4800
1334 E 79, SAginaw 1-1700
1 E 112, COmador 4-2110
202 W Harrison Oak Pk, EUcld 3-2127
Claim & Sales Offices
2340 W Devon, SHeldrk 3-7710
7945 S College Drv, HUDsn 8-1600
5940 W Fullerton, TUxedo 9-4100
3239 W 63, WAlbrk 5-6900
3448 W Ill, HIltop 5-9401
202 W Harrison Oak Pk, EUcld 3-5180

Home Office
7447 Skokie Blvd Skokie, COrnelia 7-7700

Allstate Machin Products Corp
3511 N Clark, WEingtn 5-1455

Allstate Motors Inc
Used Trks 2613 S State, CAnumt 5-5875

Allstate Wine & Liquor Co
6334 S Ashland, PRospect 6-5010

Allstates Equip Co
Used Machry 343 S Dearborn, HArisn 7-1821
(Houston—page 18)

All State Constr Co
3301 Montrose, JAksn 9-2119

All State Janitor Serv
7629 Crofton, MElros 5-3861

All-States Sewer & Septic Tank Serv
407 Knox, Undrwd 2-1234

All State Supply
8725 Chocolate Bayou, REpblc 4-4622

All State Window Clg Co
7629 Crofton, MElros 5-3861

All States Life Ins Co
3809 Main, JAksn 2-5440
(Houston—page 20)

Allstate Advtg Agcy—
Executive Admnstrtn, 3607 Yoakum, JAksn 2-5863
Production Dept, 3607 Yoakum, JAksn 2-2031
If No Ans Call, JAksn 2-4185

Allstate Drilling Co
W Bldg, CAptl 7-8332

Allstate Insurance Co—
Claim Office, 5510 Greenbriar, JAksn 9-4721
Nights Sundays & Holidays Call, JAksn 9-4721
Regional Ofc, 5510 Greenbriar, JAksn 9-4721
Greenbriar St Sales Ofc, 5510 Greenbriar, JAksn 9-4721
Main Street Sales Ofc, 4201 Main, JAksn 4-6311
Main St Serv Ofc, 4201 Main, JAksn 3-0951
Pasadena Sales Ofc, 1610 Harrop, GRnwd 2-1592
Pasadena Sales Ofc, 304 West, GRnwd 2-2895
Wayside St Sales Ofc, 6800 Hsbg, Walnt 6-9441
Wayside St Serv Ofc, 6800 Hsbg, WAlnt 3-4374
North Shepherd Sales Office, 4000 N Shepherd, OXfrd 7-0591
North Shepherd Serv Office, 4000 N. Shepherd, OXfrd 7-5311

Allstate Mortgage Co
3008 Caroline, JAksn 4-2211

Allstate Pubg Co
6601 Lodge, HOmstd 2-1190

Allstate Salvage Co
4100 N Main, Undrwd 2-0326

Allstate Tile Co
4515 Edison, MElros 5-0306

DEFENDANT'S EXHIBIT NO. 7.

Note: This Certificate is required by law to be published for three consecutive weeks in two newspapers of general circulation throughout the State, printed in the State of Texas, publication to begin within thirty days from the date hereof, and the affidavit of the proprietor, editor or publisher of each such newspaper, giving the dates of such publication, accompanied with a clipping thereof, must be sent to this office to be filed as evidence of publication. The Company must select or designate the "two newspapers". This Department will have no connection therewith.—Article 21.20-21.30, the Insurance Code

(Seal)

Certificate No. 1024 Company No. A-008

Board of Insurance Commissioners of the State of Texas

Austin, Texas, July 25, 1955

To Whom It May Concern:

This is to Certify that All States Life Insurance Company Dallas, Texas has according to sworn statement complied with the laws of Texas as conditions precedent to its doing business in this State, and I have issued to said Company a Certificate of Authority from this office entitling it to do business in this State for the year ending May 31, 1956.

Given under my hand and my seal of office at Austin, Texas, the date first above written.

(S.) GAILAND A. SMITH,
Chairman of the Board.

DEFENDANT'S EXHIBIT 8.

Form a-119

Certificate
State of Texas
No. 1141 (Seal)

Board of Insurance Commissioners

It is Hereby Certified that the instrument which is hereunto attached is a true, full and correct copy of Letter Dated: October 31, 1955 Addressed To: Board of Insurance Commissioners of Texas, Austin, Texas Signed By: Thompson, Knight, Wright & Simmons by Pinkney Grissom, Attorney for Allstate Insurance Company and Allstate Fire Insurance Company, now on file in and forming a part of the records of this Department.

In Witness Whereof I have hereunto subscribed my name officially, and have hereon impressed my Seal of Office at the City of Austin, in the State of Texas, on this 15th day of May, A.D. 1956.

(Illegible Signature),
(Seal) Chairman Board of Insurance Commissioners.

Thompson, Knight, Wright & Simmons
Attorneys and Counselors
Republic National Bank Building
Dallas 1, Texas

Thomas A. Knight
Dwight L. Simmons
Pinkney Grissom
Sol Goodell
Harold F. Thompson
William H. Neary

John W. Rutland, Jr.
J. W. Bullion
J. Claude Jackson, Jr.
Daniel R. Rogers
Robert E. Rain, Jr.
William E. Collins
Talbot Rain
Richard E. Gray, Jr.
Morris Harrell
Marvin Jay Wise
Richard L. Jones
Timothy E. Kelley
David M. Kendall, Jr.
Patrick A. Flynn
Pat S. Holloway
Bill E. Brice
Robert L. Donaison
William D. Neary

October 31, 1955

Board of Insurance Commissioners of Texas
Austin, Texas

Gentlemen:

Our File 36-10

Re Allstate Insurance Company vs. All States Life Insurance Company

On July 1, 1955, this Honorable Board granted a license to All States Life Insurance Company to do business in the State of Texas, and since that time the said company has been selling its stock and carrying on other activities in that name. Great confusion has arisen between the name, "All States Life Insurance Company", and the name, "Allstate Insurance Company".

Long prior to the above date, Allstate Insurance Company was and still is engaged in the business of writing various forms of insurance in the State of Texas and throughout the United States. As counsel for Allstate Insurance Company, we hereby protest the action of the Board in granting a license to All States Life Insurance Company in that name, and hereby request the Board to require All States Life Insurance Company to change its name and select some other name which does not infringe upon and constitute unfair competition with Allstate Insurance Company, for the reasons, among others, the following:

1. The name, "All States Life Insurance Company", is so similar to the name, "Allstate Insurance Company", that it creates confusion in the mind of the public generally.

2. The use of the name, "All States Life Insurance Company," constitutes unfair competition with Allstate Insurance Company.

3. The use of the name, "All States Life Insurance Company", when considered in connection with the fact that for many years Allstate Insurance Company has been using said name, both in the State of Texas and throughout the United States, constitutes a fraud upon the public.

4. The use of the name, "All States Life Insurance Company", is in violation of the Lanham Act and especially Title 15, Section 1126, U.S.C.

5. All States Life Insurance Company has not only appropriated the name of Allstate Insurance Company, but has and is infringing the trade-mark, "All state".

6. All States Life Insurance Company is representing to the public that it is affiliated with and is a part of Allstate Insurance Company, and is seeking to capitalize on the good name and reputation of Allstate Insurance Company.

7. The name, "All States Life Insurance Company," violates not only the letter but the spirit of Article 2.02, which provides that the name selected by a life insurance company in this State "shall not be so similar to that of any other insurance company as to be likely to mislead the public."

Allstate Fire Insurance Company joins in this protest.

Will you please advise us the Board's action in this matter at your earliest convenience.

Yours truly,

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,

By (Signed) PINKNEY GRISSOM
(Pinkney Grissom)
Attorneys for Allstate Insurance Company and Allstate Fire Insurance Company

Company

PG-M
c.c. All States Life Insurance Company
5630 Dyer Street
Dallas, Texas

DEFENDANT'S EXHIBIT NO. 9.

Form A-119

Certificate
State of Texas
No. 1140 (Seal)

Board of Insurance Commissioners

It is Hereby Certified that the instrument which is hereunto attached is a true, full and correct copy of File Copy of Letter Dated: November 8, 1955 Addressed To: Mr. Pinkney Grissom Thompson, Knight, Wright & Simmons Republic National Bank Bldg. Dallas 1, Texas Signed By: Paul D. Connor Legal Examiner Board of Insurance Commissioners Subject: Your File 36-10 Allstate Insurance Company vs. All States Life Insurance Company now on file in and forming a part of the records of this Department.

In Witness Whereof I have hereunto subscribed my name officially, and have hereon impressed my Seal of Office at the City of Austin, in the State of Texas, on this 15th day of May, A.D., 1956.

(Illegible Signature),
(Seal) Chairman Board of Insurance Commissioners

November 8, 1955

Mr. Pinkney Grissom
Thompson, Knight, Wright & Simmons
Republic National Bank Bldg.
Dallas 1, Texas

Re: Your File 36-10 Allstate Insurance Company vs. All States Life Insurance Company

Dear Mr. Grissom:

We acknowledge receipt of your letter of October 31 and advise that we have today prepared a formal Board order denying the relief requested by you.

A copy of the Board's formal order will be sent you within the next few days.

Very truly yours,
GARLAND A. SMITH,
Chairman Board of Insurance Commissioners
By PAUL D. CONNOR,
Legal Examiner

PDC:lcs

Defendant's Exhibit #10--Minutes of Meeting of the Board of Insurance Commissioners, held on 11/8/55; Omitted from the Printed Record, being heretofore copied at page 371.

. . . . . .

DEFENDANT'S EXHIBIT NO. 16.

Supplemental Agreement.

Whereas, a certain agreement was executed by W. C. Jennings and B. F. Biggers under date of April 6, 1956, for the sale by W. C. Jennings of 61,812 shares of the capital stock of All States Life Insurance Company, (an Alabama corporation);

Whereas, all of the rights of B. F. Biggers in and under the said agreement were assigned to All States Life Insurance Company, (a Texas corporation), by assignment dated May 24, 1956;

Whereas, W. C. Jennings is in the process of taking the action required under the April 6, 1956, agreement, in order to effect a financial condition of the aforementioned Alabama corporation required by said agreement, but additional time is needed by him to complete such actions;

Now, Therefore, in consideration of the mutual benefits hereunder, it is agreed between the parties hereto that the said agreement dated April 6, 1956, is hereby modified and amended as follows.

1. The date "June 5, 1956", as used in Paragraph 3 of the said agreement is hereby changed to be and read "June 26, 1956".

2. The term "thirty days" as used in Paragraph 6 of the agreement is hereby changed to be and read "ninety days".

Executed this 31st day of May, 1956.
(Signed) W. C. JENNINGS,
(W. C. Jennings),
ALL STATES LIFE INSURANCE COMPANY (a Texas (Corporation),
By (Signed) B. F. BIGGERS,
(B. F. Biggers),
President.

JUDGMENT.

Filed June 14, 1956.

In the United States District Court for the Northern District of Texas, Dallas Division.

Sears, Roebuck and Co., a corporation, and Allstate Insurance Company, a corporation, Plaintiffs,
vs. Civil Action No. 6318.
All States Life Insurance Company, a corporation, Defendant.

This case came on for trial before the Court without a jury on June 12, 1956, and the Court having heard the pleadings, the evidence, and written and oral argument of counsel, and having considered the same, the Court hereby finds the law and the facts in favor of the defendant and against the plaintiffs and each of them.

It is therefore Ordered, Adjudged and Decreed that the plaintiffs and each of them take nothing by their

suit against the defendant, and that the defendant have judgment for its costs, for which defendant may have its execution. To all of which the plaintiffs, and each of them, through their attorneys in open Court excepted.

Signed and entered June 14, 1956.

WM. H. ATWELL,
United States District Judge.

Approved as to Form:

PINKNEY GRISSOM,
Of THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Attorneys for Plaintiffs.

PAUL CARRINGTON,
Of CARRINGTON, GOWAN,
JOHNSON, BROMBERG &
LEEDS,
Attorneys for Defendant.

NOTICE OF APPEAL.

Filed July 9, 1956.

In the United States District Court for the Northern District of Texas, Dallas Division.

Sears, Roebuck & Company, a corporation, and All-State Insurance Company, Plaintiffs,

vs. Civil Action No. 6318.

All States Life Insurance Company, a corporation, Defendant.

Notice is hereby given that Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, Plaintiffs above named, hereby appeal to United States Court of Appeal for the Fifth Circuit from the Final Judgment of the Court entered in this action on June 13th, 1956.

Dated: July 9, 1956.

PINKNEY GRISSOM,
Attorney for Appellants,
Sears, Roebuck & Company
and Allstate Insurance Company,

2300 Republic National Bank Building,
Dallas, Texas

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Of Counsel.

BOND.

Filed July 9, 1956.

(Title Omitted.)

Know All Men By These Presents: That we, Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, as principals, and American Motorists Insurance Company, as surety, are held and firmly bound unto All States Life Insurance Company, a corporation, in the full and just sum of Three Thousand ($3,000.00) Dollars, to be paid to the said All States Life Insurance Company, its successors and assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 6th day of July, 1956.

Whereas, on June 13, 1956, in an action depending in the United States District Court for the Northern District of Texas, Dallas Division, between Sears, Roebuck & Company, a corporation; and Allstate Insurance Company, a corporation, as Plaintiffs, and All States Life Insurance Company, a corporation, as Defendant, a Final Judgment was rendered against the said Plaintiffs and the said Plaintiffs having filed a Notice of Appeal from said Final Judgment to the United States Court of Appeals for the Fifth Circuit;

Now, Therefore, the condition of this obligation is such, that if the said Sears, Roebuck & Company and Allstate Insurance Company shall prosecute their ap-

peal to effect and shall pay costs if the appeal is dismissed or the Judgment affirmed, or such costs as the said Court of Appeals may award against the said Sears, Roebuck & Company and Allstate Insurance Company if the Judgment is modified, then this obligation to be void; otherwise to remain in full force and effect.

SEARS, ROEBUCK & COMPANY, a corporation, and
ALLSTATE INSURANCE COMPANY, a corporation,
PINKNEY GRISSOM,
By HARRY R. NAGEL,
Their Attorney,
Principals.
AMERICAN MOTORISTS INSURANCE COMPANY,
By NEILL H. WINBORN,
(Seal) Surety.

The State of Texas,
County of Dallas.

Before Me, the undersigned Notary Public, on this day personally appeared Pinkney Grissom, known to me to be the person whose name is subscribed to the foregoing Bond and by me being first duly sworn upon oath stated that he is the Attorney for Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, duly authorized to execute the foregoing Appeal Bond and that he has executed the same for said corporations.

To Certify Which witness my hand and seal of office this 6th day of July, 1956.

MARGARET D. MOORE,
(Seal) Notary Public in and for
Dallas County, Texas.

MOTION AS TO ORIGINAL EXHIBITS.

Filed July 24, 1956.

(Title Omitted.)

To said Honorable Court:

Come now Appellants, Sears, Roebuck & Company and Allstate Insurance Company, by their Attorneys, and would show to the Court that the cost of copying the original exhibits in the above entitled and numbered cause will be considerable, and that the original exhibits are better understandable in the form in which they were introduced and they respectfully move the Court to enter an Order, the same not being objected to by the Attorney for the Appellee, All States Life Insurance Company, directing that the District Clerk send all original exhibits introduced in the hearing in this cause on June 12th and 13th, 1956, to United States Court of Appeals for the Fifth Circuit and providing that the Clerk of the United States Court of Appeals for the Fifth Circuit may, upon the conclusion of the proceedings in that Court, return such exhibits to the Clerk of this Court.

Respectfully submitted,

PINKNEY GRISSOM,
(Pinkney Grissom),
Attorney for Plaintiffs-
Appellants.

2300 Republic National Bank Bldg.,
Dallas, Texas.

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Of Counsel.

ORDER AS TO ORIGINAL EXHIBITS

(Title Omitted.)

On the Motion of the Appellants, Sears, Roebuck & Company and Allstate Insurance Company, in the above entitled and numbered cause, for an Order directing the Clerk of this Court to send to the United States Court of Appeals for the Fifth Circuit all exhibits in their original form without the necessity of copying them in the transcript of the record, and it appearing that the said Motion should be granted;

It is Ordered that the Clerk of this Court will transmit the original exhibits offered in evidence in the hearing in this case on June 12 and 13, 1956, to the Clerk of the United States Court of Appeals for the Fifth Circuit, when instructed to do so by the Attorneys of the respective parties but in any event at least ten (10) days prior to the date set for submission to that Court, and that the Clerk of the United States Court of Appeals for the Fifth Circuit may, upon the conclusion of the proceedings in that Court, return such exhibits to the Clerk of this Court.

Entered at Dallas, Texas, this 24 day of July, 1956.

WM. H. ATWELL,
United States District Judge.

Approved:

PINKNEY GRISSOM,
Attorney for Plaintiffs.
FRANK G. NEWMAN,
Attorney for Defendant.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

Filed July 24, 1956.

(Title Omitted.)

Plaintiffs-Appellants, Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, designate the following portions of the record, proceedings, and evidence to be contained in the record on appeal in this action:

1. Plaintiffs' Original Complaint.

2. Supplement to Plaintiffs' Original Complaint.

3. Plaintiffs' Amended Complaint.

4. Defendant's First Amended Answer.

5. The Transcript of the evidence with attached Exhibits, a copy of which is filed herewith.

6. Findings of Fact and Conclusions of Law orally rendered by the Court on June 13, 1956.

7. Judgment entered on June 13, 1956.

8. Notice of Appeal filed July 9, 1956.

9. Appeal Bond filed July 9, 1956.

10. Motion with reference to original Exhibits.

11. Order with reference to original Exhibits.

12. This Designation.

PINKNEY GRISSOM,
(Pinkney Grissom),
Attorney for Appellants.
2300 Republic National Bank Bldg.,
Dallas, Texas.

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Of Counsel

DEFENDANT-APPELLEE'S CROSS-DESIGNATION OF RECORD ON APPEAL.

Filed August 4, 1956.

(Title Omitted.)

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the Defendant-Appellee herein, All States Life Insurance Company hereby designates for inclusion in the Record on Appeal to the United States Court of Appeals for the Fifth Circuit the following additional portions of the record, proceedings and evidence:

1. Defendant's Amended Motion to Dismiss For Failure to State a Claim and For Failure to Join an Indispensable Party.

2. Brief of defendant in support of its Motion to dismiss.

3. Order Denying Defendant's Motion to Dismiss, dated May 21, 1956.

4. Trial Brief of defendant.

5. Plaintiff's memorandum trial brief.

6. Final Judgment of the Court.

7. A complete transcript of all testimony taken and all exhibits introduced in evidence by defendant.

8. Stipulation between the parties with reference to the introduction of certain testimony, dated June 11, 1956.

9. The written interrogatories, cross-interrogatories and answers of each of the following:

(a) The plaintiffs.

(b) J. Byron Saunders

(c) Joe S. Moore

(d) Robert O. Fagg

10. Certified copy of list of insurance companies under the supervision of the Board of Insurance Commissioners for the State of Texas as of August 31, 1955, (which defendant offered in evidence).

11. Copies of pages of telephone books for the cities of St. Louis, Dallas, Houston, Miami, Cleveland, Baltimore, Denver, Boston, Newark, Detroit, Los

Angeles, Manhattan (New York), and Chicago (which defendant offered in evidence).

12. This Designation.

CARRINGTON, GOWAN, JOHNSON, BROMBERG & LEEDS,
1900 Mercantile Bank Building,
Dallas, Texas.
By FRANK G. NEWMAN,
Attorney for Defendant.

STIPULATION.

Filed August 14, 1956.

(Title Omitted.)

To the Honorable Clerk of said Honorable Court:

Come Now Appellants, Sears, Roebuck & Company and Allstates Insurance Company, by their Attorneys, and Appellee, All States Life Insurance Company, by its Attorneys, and stipulate and agree as follows:

1. Paragraphs numbered 2, 4 and 5 of Appellee's Cross-Designation of Record on Appeal are hereby deleted.

2. Subsections (b) (c) and (d) of Paragraph numbered 9 of Appellee's Cross-Designation of Record on Appeal are hereby deleted

3. The Stipulation referred to in Paragraph No. 8 of Appellee's Cross-Designation of Record on Appeal is an original exhibit and is to be transmitted with the other original exhibits to the United States Court of Appeals pursuant to the Order of the District Court. Accordingly, Paragraph No. 8 of Appellee's Cross-Designation of Record on Appeal is hereby deleted.

4. The certified copy of list of insurance companies referred to in Paragraph No. 10 of Appellee's Cross-Designation of Record on Appeal is an original exhibit and is to be transmitted with the other original exhibits to the United States Court of Appeals pursuant to the Order of the District Court. Accordingly, Paragraph 10 of Appellee's Cross-Designation of Record on Appeal is hereby deleted.

5. Copies of pages of telephone books for the cities of St. Louis, Dallas, Houston, Miami, Cleveland, Baltimore, Denver, Boston, Newark, Detroit, Los Angeles, Manhattan (New York), and Chicago referred to Paragraph No. 11 of Appellee's Cross-Designation of Record on Appeal is an original exhibit and is to be transmitted with the other original exhibits to the United States Court of Appeals pursuant to the Order of the District Court. Accordingly, Paragraph No. 11 of Appellee's Cross-Designation of Record on Appeal is hereby deleted.

6. The exhibits attached to Plaintiff's Supplemental Complaint need not be included in the transcript, since they are being transmitted as original exhibits pursuant to the aforementioned Order of the District Court.

Dated this 13 day of August, 1956.

Respectfully submitted,
FRANK G. NEWMAN,
(Frank G. Newman).

1900 Mercantile Bank Building,
Dallas, Texas.

CARRINGTON, GOWAN, JOHNSON,
BROMBERG & LEEDS,
Of Counsel.

(David Kendall),
Attorney for Appellants.

2300 Republic National Bank Bldg.,
Dallas, Texas.

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Of Counsel.

MOTION FOR EXTENSION OF TIME FOR FILING RECORD UPON APPEAL.

Filed August 14, 1956.

(Title Omitted.)

Come Now Appellants, Sears, Roebuck & Company and Allstate Insurance Company, by their Attorneys, and respectfully move the Court to enter an Order, the same being agreed to by the Attorneys for the Appellee, All States Life Insurance Company, extending the time for filing the Record Upon Appeal until

August 29, 1956, pursuant to Rule 73 (g) of the Federal Rules of Civil Procedure.

Dated this 14th day of August, 1956.

Respectfully submitted,
DAVID KENDALL,
(David Kendall),
Attorney for Appellants.

2300 Republic National Bank Bldg.,
Dallas, Texas.

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Of Counsel.

Agreed:

FRANK G. NEWMAN,
(Frank G. Newman),
Attorney for Appellee.

1900 Mercantile National Bank Bldg.,
Dallas, Texas.

CARRINGTON, GOWAN, JOHNSON,
BROMBERG & LEEDS,
Of Counsel.

ORDER EXTENDING TIME FOR FILING RECORD UPON APPEAL.

Filed August 14, 1956.

(Title Omitted.)

On the motion of the Appellants, Sears, Roebuck & Company and Allstate Insurance Company in the

above entitled and numbered cause for an Order Extending the Time for Filing with the United States Court of Appeals for the Fifth Circuit the Record in this cause, and it appearing that the said Motion should be granted;

It is Ordered that the time for filing with the United States Court of Appeals for the Fifth Circuit the Record in this cause shall be and is hereby extended until August 29, 1956.

Entered at Dallas, Texas, this 14 day of August, 1956.

WM. H. ATWELL,
United States District Judge.

Approved:

DAVID KENDALL,
Attorney for Plaintiffs.
FRANK G. NEWMAN,
Attorney for Defendants.

SUPPLEMENTAL DESIGNATION OF RECORD.

Filed August 15, 1956.

(Title Omitted.)

Plaintiffs-Appellants, Sears, Roebuck & Company, a corporation, and Allstate Insurance Company, a corporation, designate the following portions of the record to be contained in the record on appeal in this

action, in addition to those previously designated by Plaintiffs-Appellants and by Defendant-Appellee:

1. Stipulation dated August 13, 1956 and filed August 14, 1956;

2. Motion for extension of time within which to file record on appeal;

3. Order extending time for filing record upon appeal;

4. This Designation.

DAVID M. KENDALL,
Attorney for Plaintiffs-Appellants.
2300 Republic National Bank Building,
Dallas, Texas.

THOMPSON, KNIGHT,
WRIGHT & SIMMONS,
Of Counsel.

CLERK'S CERTIFICATE.

I, GEORGE W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct transcript of the record and all proceedings in cause Number 6318 Civil wherein Sears, Roebuck & Company, a corporation and Allstate Insurance Company, a corporation are plaintiffs and All States Life Insurance Company, a corporation is defendant, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 22 day of August A.D. 1956.

GEORGE W. PARKER,
Clerk, U.S. District Court,
Northern District of Texas,
By RAMELLE HAMILTON,
Deputy Clerk.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
OCT 12 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM—1957

No. 544

SEARS, ROEBUCK & COMPANY AND
ALLSTATE INSURANCE COMPANY,
Petitioners,

v.

ALL STATES LIFE INSURANCE COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MILTON HANDLER,
425 Park Avenue,
New York 22, N. Y.,
Attorney for Petitioners.

BURTON Y. WEITZENFELD,
PINKNEY GRISSOM,
DAVID M. KENDALL, JR.
SIDNEY A. DIAMOND,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1957

No.

SEARS, ROEBUCK & COMPANY and ALLSTATE INSURANCE COMPANY,

Petitioners,

v.

ALL STATES LIFE INSURANCE COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this case on June 10, 1957.

Citations to Opinion Below

The oral opinion of the District Court is unreported (except in the form of footnote 4 to the majority opinion of the Court of Appeals); it is printed in Appendix B hereto, *infra*, p. 3a. The opinion and dissenting opinion of the Court of Appeals, printed in Appendix B, hereto, *infra*, p. 5a, are reported in 246 F. 2d 161, 114 U.S.P.Q. 19.

Jurisdiction

The judgment of the Court of Appeals was entered on June 10, 1957 (p. 26a, *infra*). A timely petition for rehearing was denied on July 17, 1957. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Questions Presented

1. In an action for trademark infringement and unfair competition tried without a jury, is the determination by the District Court of the ultimate issue of likelihood of confusion reviewable by the Court of Appeals only under the "clearly erroneous" rule?

2. In an action for infringement of a mark registered under the Lanham Act, must relief be denied unless the allegedly infringing mark is used on the same kind of goods or services as are specified in the registration?

Statutes Involved

The statutes involved (set forth in Appendix A, *infra*) are Sections 7(b) and 32(1) of the Lanham Act, 60 Stat. 427, 15 U.S.C. Sections 1057(b) and 1114(1); and Rule 52(a) of the Federal Rules of Civil Procedure, 28 U.S.C., following Section 2072.

Statement

Petitioner Sears, Roebuck & Company (hereinafter "Sears") is the well-known mail-order catalog and retail store concern with headquarters in Chicago and branches throughout the country. Sears has used the trademark "Allstate" continuously and extensively since 1926 in connection with tires, batteries and numerous other auto-

mobile accessories (R. 135, 140, 144-5); and is the owner of various U. S. Patent Office registrations of the trademark "Allstate" as applied to such articles (R. 351-2).

Petitioner Allstate Insurance Company, which was organized in 1931, is a wholly-owned subsidiary of Sears (R. 149, 231). It is the largest automobile insurance company in the world (R. 152). It is also engaged in casualty and other branches of the insurance business, including fire insurance which is written through its own subsidiary, Allstate Fire Insurance Company (R. 158). Since its organization, Allstate Insurance Company has used the name "Allstate" continuously and extensively in all of its activities (R. 231-5); and it has registered "Allstate" in the U. S. Patent Office on the Principal Register under the Lanham Act as a service mark for insurance underwriting (R. 14-20). "Allstate" insurance is sold directly to the public through Sears' mail-order catalogs and in Sears' retail stores (R. 152-3). The "Allstate" mark frequently is displayed superimposed on a map of the United States (R. 153-4, 159-60).

Allstate Insurance Company itself does not write life insurance (R. 156). Its parent Sears, however, was engaged indirectly in the life insurance business through another subsidiary from February, 1934 to June, 1938 (R. 83); and, by the time of the trial, plans were well advanced to organize an affiliate of Allstate Insurance Company to write life insurance (R. 156). The name contemplated for this new corporation was Allstate Life Insurance Company (R. 241).

All States Life Insurance Company, respondent herein, was organized under Texas law on July 1, 1955 (R. 373), although only two days earlier its charter had been disapproved on the ground that its name so resembled that

of "another insurance company" as to be likely to mislead the public (R. 116). Petitioners, through counsel, complained about the use of so nearly identical a name both to respondent, which ignored the protest (R. 274-5), and to the Texas Board of Insurance Commissioners, which ruled that it had no jurisdiction in the matter (R. 372-4). Respondent commenced offering its stock for sale to the public, using, among other things, a prospectus in which the name "All States" was displayed superimposed on a map of the United States (R. 58). This action was then commenced by petitioners against respondent in the United States District Court for the Northern District of Texas, seeking an injunction, damages and an accounting of profits for infringement of their registered marks and for unfair competition.

The jurisdiction of the District Court rested upon the express provisions of Section 39 of the Lanham Act, 15 U.S.C., Sec. 1121,* and the District Court had "pendent" jurisdiction of the related unfair competition claim under 28 U.S.C., Sec. 1338 (b). Diversity of citizenship was an available alternative basis for jurisdiction (Sears is a New York corporation, Allstate Insurance Company an Illinois corporation, and respondent a Texas corporation).

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* In view of the fact that Section 45 of the Lanham Act, 15 U.S.C., Sec. 1127, defines commerce as "all commerce which may lawfully be regulated by Congress," it has been held repeatedly that the Lanham Act is applicable to infringing conduct which affects interstate commerce. *Iowa Farmers' Union* v. *Farmers' Educational and Cooperative Union*, 114 U.S.P.Q. 382 (8th Cir. 1957); *Pure Foods, Inc.* v. *Minute Maid Corp.*, 214 F. 2d 792 (5th Cir. 1954); *Time, Inc.* v. *Life Television Corp.*, 123 F. Supp. 470 (D. Minn. 1954); *National Tuberculosis Ass'n* v. *Summit County Tuberculosis & Health Ass'n*, 122 F. Supp. 654 (N.D. Ohio 1954); *Mendes* v. *New England Duplicating Co.*, 94 F. Supp. 558 (D. Mass. 1950), *aff'd*, 190 F. 2d 415 (1st Cir. 1951); *Cole of California, Inc.* v. *Colette of California, Inc.*, 79 U.S.P.Q. 267 (D. Mass. 1948).

The case was tried before U. S. District Judge William H. Atwell without a jury. Petitioners established their widespread sales and advertising of goods and services under the "Allstate" mark, throughout the State of Texas as well as elsewhere, and the consequent renown of the mark and its association with petitioners in the public mind. Copious evidence of actual confusion between the All States and Allstate insurance companies was introduced. Judge Atwell upon the conclusion of the trial delivered a short oral opinion from the bench dismissing the complaint (R. 349-51). He made no separate findings and conclusions. The ground of the opinion was that the petitioners were not engaged in the life insurance business and thus that "there is no confusion nor reason for confusion between what the defendant is engaged in and what the plaintiffs are engaged in."

The Court of Appeals for the Fifth Circuit affirmed, with one judge dissenting. It treated the language of the District Judge quoted just above as a finding of fact that there was no likelihood of confusion between the different types of insurance involved; held that "in accord with one of the best established principles of appellate procedure, we may not reverse findings of fact by the trial court unless clearly erroneous"; and concluded that Judge Atwell's "finding" that "there was no infringement of appellant Allstate's service marks," was not clearly erroneous and therefore was binding upon it.

Reasons for Allowance of the Writ

A. The decision of the court below is in direct conflict with the decision of the Court of Appeals for the Third Circuit in *Sears, Roebuck and Co.* v. *Johnson*, 219 F. 2d 590 (3d Cir. 1955). This conflict extends to both of the questions presented for review herein. Therefore,

in the interest of clarity we shall first state the Third Circuit case and then discuss the conflict separately with relation to each of the two questions.

In *Sears, Roebuck* v. *Johnson*, petitioner Sears was plaintiff and the defendant was a partnership operating a driving school under the name of "All-State School of Driving." The District Court took note of the extensive use of "Allstate" in connection with the sale of automobile tires and other accessories by Sears, and in connection with the writing of insurance by Sears' wholly-owned subsidiary Allstate Insurance Company. Some evidence of actual confusion was introduced. The District Court held, however, that there was no competition between Sears and the defendant because the defendant did not sell any merchandise; and that there was no competition between Allstate Insurance Company and the defendant because the one did not conduct a driving school and the other sold no insurance. The District Court thereupon ruled that there was no likelihood of confusion and ordered judgment for the defendant. *Sears, Roebuck and Co.* v. *Johnson*, 121 F. Supp. 955 (E.D. Pa. 1954).

On appeal, the Third Circuit unanimously reversed. The Court of Appeals specifically rejected defendant's contention that it was bound by the "clearly erroneous" provision of Rule 52(a) in considering the District Court's finding on the issue of likelihood of confusion, since this was not one of the "basic facts" but rather an "inference" or "ultimate fact" to be derived from the "basic facts." 219 F. 2d at 591. The Third Circuit refused to attach controlling significance to the absence of competition between the parties and concluded, "We think that plaintiff has made out a very clear case of trade-name infringement." *Id.* at 593.

1. Likelihood of confusion is the fundamental issue in every trademark infringement case. The statute itself (Lanham Act, Sec. 32; 15 U.S.C., Sec. 1114) defines infringement in terms of the use of a "colorable imitation" of a registered mark where such use is "likely to cause confusion or mistake or to deceive purchasers"; and the term "colorable imitation" in turn is defined (Lanham Act, Sec. 45; 15 U.S.C., Sec. 1127) to include "any mark which so closely resembles a registered mark as to be likely to cause confusion or mistake or to deceive purchasers." This concept of infringement is declaratory of the common law and applies equally in unfair competition cases involving the use of marks or names, registered or unregistered.*

Whether it be denominated a "finding" or a "conclusion", it is thus apparent that the ruling of a court on the issue of likelihood of confusion actually constitutes a decision on the question of infringement.

The District Court in the instant case held there was no likelihood of confusion between "All States" for life insurance and "Allstate" for other kinds of insurance and for automobile accessories. As to this, the Fifth Circuit thought it "clear" that the record

> "would have been sufficient to authorize a finding by the trial court of the possibility and perhaps even of the likelihood of confusion." (Appendix B, *infra*, p. 19a)

However, it specifically ruled that the issue was one of fact, that the finding was not "clearly erroneous", and that it could not reverse the trial court's finding under

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* See, *e.g.*, *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 305 U. S. 315, 325 (1938); *Hanover Star Milling Co.* v. *Metcalf*, 240 U. S. 403, 413 (1916); *Coca-Cola Co.* v. *Snow Crest Beverages, Inc.*, 162 F. 2d 280, 282-83 (1st Cir.), *cert. denied*, 332 U. S. 809 (1947).

the circumstances. In so holding, the Fifth Circuit adhered to its own prior rulings in trademark cases, where it has regularly refused to review findings on the ultimate issues unless "clearly erroneous". *Tampa Cigar Co.* v. *John Walker & Sons, Ltd.*, 222 F. 2d 460, 461 (5th Cir. 1955); *Chappell* v. *Goltsman*, 197 F. 2d 837, 839 (5th Cir. 1952).

The District Court in *Sears, Roebuck* v. *Johnson* similarly held there was no likelihood of confusion between "All-State" for a driving school and "Allstate" for automobile accessories and insurance. But the Court of Appeals for the Third Circuit held (219 F. 2d at p. 591):

> "In considering whether or not the district court erred in finding that no likelihood of confusion existed, this court is not bound (although defendants contend otherwise) by Rule 52(a) of the Federal Rules of Civil Procedure, 28 U.S.C.* In disturbing a district court's findings of basic facts, this court is guided by the 'clearly erroneous' provision of Rule 52(a). But Rule 52(a) is not applicable where, as here, the dispute is not as to the basic facts, but as to what inference (i.e., ultimate fact) should reasonably be derived from the basic facts. This court, by examining the basic facts found by the district court, can determine, as advantageously as the district court can, whether or not an inference of likelihood of confusion is warranted.**"

In deciding *Sears, Roebuck* v. *Johnson*, the Third Circuit relied upon its previously expressed views that, "while accepting the facts competently found by the trial court as correct, an appellate court remains free to draw the ultimate inferences and conclusions which, in its opinion, the findings reasonably induce." *Kuhn* v. *Princess Lida of Thurn & Taxis*, 119 F. 2d 704, 705-6 (3d Cir. 1941);

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* Court's footnote omitted here.

** Court's footnote omitted here.

cf. *In re Kellet Aircraft Corp.*, 186 F. 2d 197, 200 (3d Cir. 1950); *Campbell Soup Co.* v. *Wentz*, 172 F. 2d 80, 82 (3d Cir. 1948).

The divergence of principle which led to this direct conflict of decisions is by no means limited to the Third and Fifth Circuits. It pervades the entire country. The Second and Seventh Circuits agree with the Third; whereas the First, Sixth and Eighth share the diametrically opposite view along with the Fifth.

The Second Circuit is committed to the rule that likelihood of confusion is "a question reviewable on appeal": *LaTouraine Coffee Co.* v. *Lorraine Coffee Co.*, 157 F. 2d 115, 117 (2d Cir. 1946), *cert. denied*, 329 U. S. 771 (1946). While the ruling of the trial judge on the question of "whether the public is likely to be deceived" is a finding on "a question of fact", such a finding "is not conclusive on an appellate court, if it takes a different view as to the likelihood of deception." *Best & Co. Inc.* v. *Miller*, 167 F. 2d 374, 377 (2d Cir.), *cert. denied*, 335 U. S. 818 (1948).* Judge Clark, one of the principal draftsmen of Rule 52(a), dissented on the merits in the *Best & Co.* case but agreed with the majority that the finding of the district court on the issue of likelihood of confusion is not conclusive on appeal. He wrote (167 F. 2d at 378):

> "• • • plaintiff need show only the defendant's confusing use, without proof of damage or other unfairness than the use, and *our duty to review* is clear" (emphasis added).

Similarly, the Seventh Circuit has held specifically that the basic question presented by the use of allegedly in-

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* Accord: *Speed Products Co.* v. *Tinnerman Products, Inc.*, 179 F. 2d 778, 780 (2d Cir. 1949); *Miles Shoes, Inc.* v. *R. H. Macy & Co.*, 199 F. 2d 602, 602-3 (2d Cir. 1952), *cert. denied*, 345 U. S. 909 (1953).

fringing trademarks or trade names is "equally open" "to both lower and appellate courts for their separate determination as to confusing similarity." *Soy Food Mills, Inc.* v. *Pillsbury Mills, Inc.*, 161 F. 2d 22, 24 (7th Cir.), *cert. denied*, 332 U. S. 766 (1947). In the cited case, where the plaintiff's mark appeared on a copyrighted label, the Court of Appeals for the Seventh Circuit went on to say (at p. 25):

> "We are of the opinion that not only is the factual question thus open to the appellate court, but it is our *unavoidable duty* to examine the two trademarks or trade-names or copyrights and decide the question of fact for ourselves" (emphasis added).

And in *J. S. Tyree, Chemist, Inc.* v. *Thymo Borine Laboratory*, 151 F. 2d 621, 624 (7th Cir. 1945), an action for trademark infringement, the Seventh Circuit held that:

> "• • • the trial court has the primary function of weighing the evidence and finding the facts, and we are bound by the findings if they are supported by the evidence. The rule, however, does not operate to entrench with like finality, the ultimate fact conclusions drawn therefrom."*

On the other hand, the First Circuit has held unequivocally that the "ultimate question of the likelihood of consumer confusion" in trademark infringement and unfair competition cases "is one of fact", *Coca-Cola Co.* v. *Snow Crest Beverages, Inc.*, 162 F. 2d 280, 283 (1st Cir.);

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*See also *Becker* v. *Loew's, Inc.*, 133 F. 2d 889, 894 (7th Cir.), *cert. denied*, 319 U. S. 772 (1943); *Albert Dickinson Co.* v. *Mellos Peanut Co.*, 179 F. 2d 265, 269 (7th Cir. 1950); cf. *California Fruit Growers Exchange* v. *Sunkist Baking Co.*, 166 F. 2d 971, 973 (7th Cir. 1947).

cert. denied, 332 U. S. 809 (1947), which is reviewable by the Court of Appeals "only for clear error under Rule 52(a)". *Dwinell-Wright Co.* v. *National Fruit Products Co.*, 140 F. 2d 618, 623 (1st Cir. 1944).

The Sixth Circuit interprets Rule 52(a) to require that the finding of the district court on the question of "a tendency to * * * deceive" in a trademark case "must be accepted" if not "clearly erroneous". *Statler Manufacturing Co.* v. *George C. Knight Co.*, 228 F. 2d 136, 139 (6th Cir. 1955).* And the Eighth Circuit is definite in its view that "The trial court's finding of fact" on the question of likelihood of confusion is "binding on us unless it can be shown to be clearly erroneous" (citing Rule 52(a)). *Brown & Bigelow* v. *B-B Pen Co.*, 191 F. 2d 939, 943 (8th Cir. 1951), *cert. denied*, 343 U. S. 920 (1952).**

The proper interpretation of Rule 52(a) in the trademark field raises basic policy questions concerning the administration of justice in the federal courts. Under the theory of the court below, valuable property interests in trade symbols are subject to the fluctuating judgments of individual trial judges rather than the collective judgment of an appellate tribunal.

We do not seek to probe into the evidentiary facts on which the final decision rests; clearly, they are sheltered by Rule 52(a). But we do say that determining "likelihood of confusion" requires a different mental process

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* Accord: *John T. Lloyd Laboratories, Inc.* v. *Lloyd Bros. Pharmacists, Inc.*, 131 F. 2d 703, 706 (6th Cir. 1942); cf. *Socony-Vacuum Oil Co.* v. *Oil City Refiners, Inc.*, 136 F. 2d 470, 473 (6th Cir.), *cert. denied*, 320 U. S. 798 (1943) (applying same principle to master's finding of fact under Rule 53(e)(2)).

** Accord: *Star Bedding Co.* v. *The Englander Co.*, 239 F. 2d 537, 542 (8th Cir. 1957); *Cleo Syrup Corp.* v. *Coca-Cola Co.*, 139 F. 2d 416, 417 (8th Cir. 1943), *cert. denied*, 321 U. S. 781 (1944); *Skinner Manufacturing Co.* v. *Kellogg Sales Co.*, 143 F. 2d 895, 899 (8th Cir.), *cert. denied*, 323 U. S. 766 (1944).

from a decision on whether a particular physical fact occurred. It requires an exercise of judgment above and beyond that needed in deciding issues of credibility and veracity. It involves not so much a finding of fact as an application of a rule of law to the facts found. In this realm of the "ultimate fact," of the "drawing of inferences from the facts," of the "mixed question of fact and law," the reasons underlying a grant of finality to the findings of the trial court disappear and the reasons for providing appellate review come into play.

The problem in its general aspects has been dealt with by Robert L. Stern in an article, *Review of Findings of Administrators, Judges and Juries: A Comparative Analysis*, 58 HARV. L. REV. 70 (1944) (at p. 113):

> "But no reason of policy and no rule or statute require that the trial court's judgment as to the application of a rule of law to the facts found be binding to any extent on the appellate court. The trial judge is neither more expert in the particular field nor more representative of the community than the appellate court; if anything, he is less so. His judgment as to the application of a rule to facts found is not likely to be superior to that of the reviewing body, which is composed of a greater number of men of at least presumably equal competence in precisely the same field. And the fact that Congress has vested in the trier original jurisdiction to hear a case does not manifest an intention that his determination be final. To the contrary, the creation of appellate courts with full power to review in itself reflects a strong policy that litigants should not be bound by the ruling of the subordinate tribunal. The foundation of this policy is, of course, the belief that the decision made by the appellate court is more likely to be 'correct.' The public interest thus does not require that an appellate court accord any degree of finality to the judgment of a trial judge as to the application of law to facts, but points the other way."

As Stern implies, a narrow construction of Rule 52(a), such as that announced by the Fifth Circuit in the instant case, makes the identity of the particular judge who presides at the trial a crucial hazard of litigation.* There is no doubt that likelihood of confusion is the basic issue in a trademark or unfair competition case; if the trial judge's determination of this issue is imbued with finality except when "clearly erroneous," then the unsuccessful party to such an action is denied meaningful appellate review.

The instant case affords an object-lesson of precisely the kind of hazard envisaged by these writers. No one can read the record of the trial in the District Court without recognizing that it was a travesty. Judge Atwell first attempted to have the parties stipulate their case on the basis of his incomplete and inaccurate summary of the pleadings (R. 107-8). He rushed the lawyers on both sides through their direct and cross-examination.** In a trial that lasted one day and part of the next morning, 25 witnesses were herded across the stand, the depositions of 12 others were read, and 22 exhibits, many of them quite voluminous, were offered in evidence. On one occasion, without any objection from the other side, Judge Atwell excluded an exhibit and then fined plaintiff's counsel for

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* Moore's Federal Practice states:

> "And another factor is the reliability of the trier of the facts. While appellate 'courts should be slow to impute to trial courts a disregard of their duties and responsibilities or a want of diligence or perspicacity in evaluating the credibility of witnesses and the weight of evidence', the reputation and standing of the trial judge for experience, discernment, detachment, reliability, carefulness, probity and other qualities that combine to make judging the master's art cannot and should not be ignored." 5 MOORE'S FEDERAL PRACTICE, Par. 52.03[1], p. 2616 (2d ed. 1951)

** See, *e.g.*, R. 141, 143-4, 146-7, 279, 301, 327.

contempt when he tried to prove his point by a different method (R. 172); although the fine later was remitted "for the time being" (R. 172). Even the cold printed record shows clearly that the Judge had great difficulty in hearing what was said by witnesses and counsel.* And still he decided the case in an oral opinion delivered immediately upon the conclusion of the testimony (R. 349).

This specific illustration of a difficult trial, we submit, gives added point to the need for the resolution by this Court of the conflict over the proper interpretation of Rule 52(a). Litigants and the judiciary both require authoritative guidance concerning the scope of review of a trial judge's vital ruling on the issue of likelihood of confusion.

2. The second issue on which the holding of the court below conflicts with the Third Circuit's holding in *Sears, Roebuck* v. *Johnson*, is whether trademark protection extends to non-competing goods and services, *i.e.*, the use of the allegedly infringing mark on goods or services other than those dealt in by the complaining party. The District Court in the instant case pointed out that respondent is engaged only in the life insurance business, that Sears sells merchandise, and that Allstate does not write life insurance. The District Court stated:

> "I further find as a fact that there is no confusion, nor reason for confusion, between what the defendant is engaged in, and what the plaintiffs are engaged in." (Appendix B, *infra*, p. 4a.)

It is evident that the trial judge was proceeding on the theory that there could be no *actionable* confusion under the circumstances presented, since the absence of competition, to him, insulated the plaintiffs (petitioners here) from any damage. This is the only plausible interpreta-

* See, *e.g.*, R. 118-9, 139-40, 155, 167-9, 244-5, 314-5.

tion of the quoted language, because the record is replete with evidence of actual confusion between the two insurance companies. Substantially all of this evidence was uncontradicted and unimpaired by cross-examination.* For example, seven witnesses testified that they thought they were being offered an opportunity to subscribe for stock of petitioner Allstate Insurance Company, when actually stock of respondent All States Life Insurance Company was being offered** (R. 182-3, 184-6, 190-1, 216-7, 245-6, 247-9, 250-3). Numerous inquiries were directed to Sears and to Allstate in person and by telephone asking further information about the supposed public offering of Allstate stock (R. 193-4, 222-3, 259-65).*** Allstate's Houston office received a letter from the State of Minnesota Securities Division, demanding that it cease offering its stock for sale in Minnesota without registration (R. 261). A check of incoming telephone calls and mail intended for respondent All States but received at petitioner Allstate's Dallas branch office during selected periods (R. 202) showed the receipt of 103 pieces of mail in ten weeks of 1955, 74 pieces of mail in five weeks of 1956, and 52 telephone calls in five months of 1955, including a substantial number of long distance calls for the president

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* Unlike most insurance companies, which deal through brokers, petitioner Allstate sells its policies directly to the public, principally through the Sears stores and mail-order catalogs (R. 152-3) and the reliance of the court below on close similarities between the names of other existing insurance companies (Appendix B, *infra*, pp. 16a-18a) therefore was entirely misplaced.

** Allstate is a wholly-owned subsidiary of Sears and its stock has never been available to the public (R. 149, 152).

*** To the extent that any of the confusion, mistake or deception was caused by affirmative misrepresentations rather than the mere similarity of names, respondent nevertheless is responsible because it made the instrument of misrepresentation available. *Warner & Co.* v. *Eli Lilly & Co.*, 265 U. S. 526 (1924); *Upjohn Co.* v. *Schwartz*, 246 F. 2d 254 (2d Cir. 1957); *Ross-Whitney Corp.* v. *Smith Kline & French Laboratories*, 207 F. 2d 190, 197 (9th Cir. 1953).

and other executives of All States (R. 364-71). On the morning of the day the trial began, Allstate received by mail a specimen of urine, which hardly could have come from anyone other than an applicant for life insurance (R. 204-5).* The Republic National Bank addressed a letter by name to Allstate's Dallas branch manager, offering a special service it had available for life insurance companies (R. 202-3). And an irate policyholder threatened to cancel her Allstate insurance because of high-pressure tactics by a salesman of All States stock (R. 99).**

In affirming the trial judge, the Fifth Circuit clearly gave controlling significance to the absence of actual competition, although it paid lip service to the principle that this "is not the decisive factor as to the likelihood of confusion." The Court of Appeals restricted its own consideration of the proper scope of protection by announcing (without citation of authority) a narrow interpretation of Section 7(b) of the Lanham Act, which deals with the *prima facie* effect of a registration. It held:

> "* * * the marks as such do not carry the statutory presumptions of registrant's exclusive right to use except *as to the goods actually specified* in each certificate of registration." [emphasis in original] (Appendix B, *infra*, p. 14a)

Since the same principle obviously would apply to services, and since the "Allstate" mark was not registered for

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* Respondent was accepting applications for policies at the time (R. 343, 334).

** Cf. *National Lead Co.* v. *Wolfe*, 223 F. 2d 195, 201 (9th Cir.), *cert. denied*, 350 U. S. 883 (1955), where the Court of Appeals noted that "the trial court found that there were no purchasers who were confused" although uncontradicted evidence of many instances of actual confusion had been introduced. The Court of Appeals said "we are unable to perceive how the court could have made such a finding in the light of this record."

life insurance because it had not yet been used in that particular branch of the business, this reading of Section 7(b) effectively denied to petitioners the benefits of their registrations under the Lanham Act. What is more, the Fifth Circuit proceeded to discuss the case as though petitioners could have no hope of prevailing without the help of the statutory presumptions. This, of course, is consistent with its view that, absent actual competition in the same goods or services, even actual confusion provides no basis for relief.*

Whatever language it may have used, the rationale of the decision below is implicit in the final result that it reached: "Allstate" as a service mark for automobile, casualty and fire insurance, and as a trademark for vari-

* The court below apparently was influenced by the existence of another All States Life Insurance Company and assumed that this also influenced the trial court. The company referred to is an Alabama corporation whose activities always have been on a small scale (R. 122-30, 254-6, 355). Since 1952, it has been qualified to transact business only in Alabama (R. 355). After the commencement of this action, it purported to assign to respondent the right to use its name in Texas (R. 49-52); and, still later, it purported to assign to respondent its name as a service mark for insurance underwriting in Texas (R. 52-56). The Alabama corporation was licensed in Texas only for a period of approximately seven months in 1937-1938 (R. 355) and even then did not use its own name in dealing with any Texas policyholders (R. 271). Plainly, it had no rights to assign; the purported assignments are void because they are not supported by any accompanying good will. *Neltic Rosenstein, Inc.* v. *Princess Pat, Ltd.*, 220 F. 2d 444, 450-453 (C.C.P.A. 1955); *E. F. Prichard Co.* v. *Consumers Brewing Co.*, 136 F. 2d 512, 518, 521-22 (6th Cir. 1943), *cert. denied*, 321 U. S. 763 (1944); *American Broadcasting Co.* v. *Wahl Co.*, 121 F. 2d 412 (2d Cir. 1941). As assignments post litem motam they constitute evidence only of respondent's bad faith. Any use of the name by the Alabama corporation would be irrelevant here in any event because use by a third party is not a defense to an action for infringement. *National Lead Co.* v. *Wolfe*, 223 F. 2d 195, 204 (9th Cir.), *cert. denied*, 350 U. S. 883 (1955); *Bond Stores, Inc.* v. *Bond Stores, Inc.*, 104 F. 2d 124, 125 (3d Cir. 1939); *Ward Baking Co.* v. *Potter-Wrightington, Inc.*, 298 Fed. 398, 402, 404 (1st Cir. 1924).

out items of merchandise, was denied protection against the substantially identical mark "All States" for the reason that the latter was used only for life insurance.

In *Sears, Roebuck* v. *Johnson,* Chief Judge Kirkpatrick of the Eastern District of Pennsylvania adopted an approach much the same as that of Judge Atwell of the Northern District of Texas in the instant case. Judge Kirkpatrick ruled that protection was limited to the use of the allegedly infringing mark in such a way as "to mislead prospective purchasers". Since there was "no competition whatever" between the parties, and the operation of a driving school "is not a normal field of expansion for a business like the plaintiff's," there was no "possibility of loss." He therefore dismissed the complaint.

In reversing, the Court of Appeals for the Third Circuit stated (219 F. 2d at p. 593):

> "Defendants emphasize the point that plaintiff does not provide the same services they do, and therefore there could be no confusion. The fact that two parties market the same goods or services and are in direct competition with each other is important. But the absence of these factors is not conclusive. Restatement, Torts §730 (1938); Bond Stores, Incorporated *v.* Bond Stores, Inc., 3 Cir., 1939, 104 F. 2d, 124; Duro Co. *v.* Duro Co., 3 Cir., 1928, 27 F. 2d, 339."

The Third Circuit emphasized the association between Sears' automobile accessories and Allstate's automobile insurance on the one hand, and the defendant's driving instruction services on the other, and concluded that "there is sufficient probability that confusion will result in the public's mind." The opinion also relied on the view that the public was not "likely through its own due care to ascertain the different sources" of the services of the respective parties.

The extent of the conflict between the decisions of these two circuits may be pointed up by noting that the parties in the instant case were at the time of the trial both engaged in different branches of the insurance business and that petitioners already had made definite plans for going into the life insurance field under the "Allstate" name.

On the issue of non-competing goods and services, like the issue of reviewability, this conflict of decisions between the Fifth and Third Circuits is merely symptomatic of a deep conflict of principle that embraces the entire federal judicial system. There are three separate and irreconcilable lines of authority. While all of these originated prior to the Lanham Act, they currently represent also the manner in which the statute is interpreted in the respective circuits that follow them.

Under the liberal view (exemplified by *Sears, Roebuck v. Johnson*), likelihood of customer confusion as to source or origin is sufficient to justify protection without regard to whether the parties are actual or potential competitors. It is enough that the confusion created by the use of the mark might cause the public to attribute the defendant's goods (or services) to the complaining party. Relief will be granted unless the goods are so obviously unrelated as to insure that consumers will not infer any connection between their respective sources. The likelihood of confusion in the customer's mind gives rise to the cause of action; it does not matter that in fact there may be no likelihood of the complaining party ever dealing in goods similar to those of the defendant.*

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* Relief granted: *Aunt Jemima Mills Co. v. Rigney & Co.*, 247 Fed. 407 (2d Cir. 1917), *cert. denied*, 245 U. S. 672 (1918) (flour *v.* pancake syrup); *Wall v. Rolls-Royce of America, Inc.*, 4 F. 2d 333 (3d Cir. 1925) (automobiles *v.* radio tubes); *Yale Electric Corp. v. Robertson*, 26 F. 2d 972 (2d Cir. 1928) (locks *v.* flashlights); *L. E. Waterman v. Gordon*, 72 F. 2d 272 (2d Cir. 1934) (fountain pens

An intermediate view (characteristic of the Second Circuit since 1939) requires an additional showing beyond the likelihood of confusion in order to secure relief against the use of a mark on non-competing goods. The complaining party must justify protection for his mark by establishing either the likelihood of injury to his business reputation (e.g., because the defendant makes poor quality goods), or the likelihood that he will be forestalled from entering a field which he has demonstrated an intention to exploit or which is otherwise within his normal area of business expansion. In other words, the plaintiff must show actual or potential invasion of a specific commercial interest in order to succeed; customer confusion alone is insufficient despite the fact that it may lead to a false attribution of origin.*

The third and narrowest view (associated particularly with the Seventh Circuit) limits protection to those circumstances where the goods are substantially identical in physical characteristics. Under this view, it is irrelevant

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v. razor blades); *Armour & Co.* v. *Master Tire & Rubber Co.*, 34 F. 2d 201 (S.D. Ohio 1925) (meat *v.* tires); *Lady Esther, Ltd.* v. *Flanzbaum*, 44 F. Supp. 666 (D. R. I. 1942) (cosmetics *v.* ladies' shoes and stockings); *Bulova Watch Co.* v. *Stolzberg*, 69 F. Supp. 543 (D. Mass. 1947) (watches *v.* shoes); *Elder Manufacturing Co.* v. *Martin Trenkle Co.*, 90 F. Supp. 889 (E. D. Ark. 1950) (boys' clothing *v.* paints); *Time, Inc.* v. *Life Television Corp.*, 123 F. Supp. 470 (D. Minn. 1954) (magazine *v.* retail sale of television sets).

* Relief denied: *S. C. Johnson & Son, Inc.* v. *Johnson*, 116 F. 2d 427 (2d Cir. 1940) (the first "Johnson" case) (floor wax *v.* fabric cleaner); *Dwinell-Wright Co.* v. *White House Milk Co.*, 132 F. 2d 822 (2d Cir. 1943) (coffee and tea *v.* evaporated milk); *S. C. Johnson & Son, Inc.* v. *Johnson*, 175 F. 2d 176 (2d Cir.), *cert. denied*, 338 U. S. 860 (1949) (the second "Johnson" case) (floor wax *v.* fabric cleaner); *Federal Telephone & Radio Corp.* v. *Federal Television Corp.*, 180 F. 2d 250 (2d Cir. 1950) (radio and telegraph parts *v.* television receivers); *Hyde Park Clothes, Inc.* v. *Hyde Park Fashions, Inc.*, 204 F. 2d 223 (2d Cir.), *cert. denied*, 346 U. S. 827 (1953) (men's clothing *v.* women's clothing); *G. B. Kent & Sons, Ltd.* v. *P. Lorillard Co.*, 114 F. Supp. 621 (S.D.N.Y. 1953), *aff'd*, 210 F. 2d 953 (2d Cir. 1954) (brushes *v.* cigarettes).

that customers may in fact be confused as to the source of the goods. Since no trade has been diverted to the defendant, and there is no likelihood of direct damage, the theory is that no protectible right of the complaining party has been violated. The instant case, as it now stands, is in this third category;* relief was denied below because petitioners are not direct competitors of respondent.

The basic question presented is whether protection should be granted against the use of the same or a confusingly similar mark on non-competing goods or services and, if so, how far such protection should extend. The conflict is over-ripe for resolution by this Court.

B. The ruling of the court below on each of the two issues embraced within the questions presented for review constitutes a decision upon an important question of federal law which has not been, but should be, passed upon by this Court.

1. Rule 52(a) of the Federal Rules of Civil Procedure, which was promulgated by this Court pursuant to 28 U.S.C., Sec. 2072, is a key provision in the administration of justice by the courts of appeals. As we have indicated

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* Relief denied: *Philco Corp.* v. *Phillips Manufacturing Co.*, 133 F. 2d 663 (7th Cir. 1943) (electrical appliances *v.* electrically-operated industrial machines); *Horlick's Malted Milk Corp.* v. *Horlick*, 143 F. 2d 32 (7th Cir. 1944) (malted milk *v.* dog food); *California Fruit Growers Exchange* v. *Sunkist Baking Co.*, 166 F. 2d 971 (7th Cir. 1947) (fruits, fruit juices and vegetables *v.* bread); cf. *California Fruit Growers Exchange* v. *Windsor Beverages*, 118 F. 2d 149 (7th Cir. 1941) (fruits and fruit juices *v.* fruit-flavored carbonated beverages; relief granted, but this was the "outer limit of protection", 143 F. 2d 32, 35); *Consumers Petroleum Co.* v. *Consumers Co. of Illinois*, 169 F. 2d 153 (7th Cir. 1948) *cert. denied*, 335 U. S. 902 (1949) (coal *v.* fuel oil); see also *Jewel Tea Co.* v. *Kraus*, 187 F. 2d 278, 284 (7th Cir. 1950); *Champion Paper & Fibre Co.* v. *National Ass'n of Mutual Assurance Agents*, 148 F. Supp. 123, 124 (D. D. C. 1957).

above, the instant case presents a sharply focused issue of its proper application in a numerically large and commercially important class of cases. The interpretations of Rule 52(a) by the various circuits are in irreconcilable conflict. This Court never has passed upon the question and we submit that it should do so now.

2. The question of whether a federally registered trademark or service mark can be infringed by use on goods or services other than those specified in the certificate of registration presents an equally important issue in the construction and application of the federal trademark laws. Thirty years ago, this Court had before it on certiorari a case which involved the issue of whether protection was available against the use of a trademark on non-competing goods. After plenary consideration, however, the decision turned on another point, and the Court never reached the question of non-competing goods. *Beech-Nut Packing Co.* v. *P. Lorillard Co.*, 273 U. S. 629 (1927). Mr. Justice Holmes said specifically (at p. 632):

> "It may be true that in a case like the plaintiff's its rights would not be sufficiently protected by an injunction against using the marks upon goods of the same class as those to which the plaintiff now applies it and to which its registration is confined. Upon that we express no opinion."

In the intervening years, many hundreds of cases involving this issue have been decided by the federal district courts and courts of appeals. Not one has been reviewed by this Court. Meanwhile, the confusion of 1927 has been many times confounded. Meanwhile also, the Lanham Act has been in effect for over ten years, a constantly increasing number of cases are framed under it, and yet the crucial issue of the scope of protection to be afforded to a registered mark has never been passed upon by the Court. At a bare minimum, a definitive ruling

is needed on the question of whether a trademark proprietor is limited to the specific items listed in his registration certificate. As we said in discussing the conflict of decisions in this field, we believe the issue is over-ripe for resolution by this Court.

3. It remains to be noted that the twin questions presented by this case are intimately interwoven. If a trial judge should choose the wrong principle with relation to non-competing goods, and the court of appeals should treat his decision on the likelihood of confusion as binding if not "clearly erroneous," then there can be no effective review and the present state of confusion in the cases will continue to develop in the direction of complete chaos. Instruction from this Court on both the substantive principle and the scope of appellate review is urgently needed.

Trademarks have tremendous commercial importance in modern business. The instant case presents two clearly identifiable issues of broad general application to trademark litigation on which the Court has never passed.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

October, 1957.

MILTON HANDLER,
Attorney for Petitioners.

BURTON Y. WEITZENFELD,
PINKNEY GRISSOM,
DAVID M. KENDALL, JR.,
SIDNEY A. DIAMOND,
Of Counsel.

APPENDIX A

Lanham Act, 60 Stat. 427 (1946).

SEC. 7(b). *Same* [*Certificate of registration on the principal register*]—*Prima facie evidence.*

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein (15 U.S.C. 1057(b)).

SEC. 32(1). *Remedies—Infringement.*

Any person who shall, in commerce, (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of any registered mark in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or services; or (b) reproduce, counterfeit, copy, or colorably imitate any such mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale in commerce of such goods or services, shall be liable to a civil action by the registrant for any or all of the remedies hereinafter provided in this chapter, except that under clause (b) of subdivision (1) of this section the registrant shall not be entitled to recover profits or damages unless the acts have been committed

with knowledge that such mark is intended to be used to cause confusion or mistake or to deceive purchasers (15 U.S.C. 1114 (1)).

Federal Rules of Civil Procedure, 28 U.S.C. following Sec. 2072.

RULE 52. *Findings by the Court.*

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

APPENDIX B

Oral opinion of the United States District Court for the Northern District of Texas

This case was filed on December 6, 1955, and summons was returned executed on December 7. From that time on, various pleadings were filed by both the defendant and the plaintiff consisting of answers and amendments, interrogatories, and the Rules of Procedure is pretty much covered and exhausted by these various pleadings. On May 14, the Defendant's Amended Motion to Dismiss was filed, and on May 21, that motion was acted on by the Court and overruled. The grounds of that motion to dismiss was that there was no jurisdiction in this Court because the State Court, the State law, gave a forum to which the plaintiffs might go if they desired relief as to the name which had been granted to the defendant and its assignors by the Insurance Commissioner. That motion was overruled because the Court could not recognize a State Statute which would take away from the Court its federal jurisdiction for litigation growing out of a diversity of citizenship.

The Court has been somewhat surprised by the continuous fattening of the record, by the parties, especially the plaintiffs, and has done its best to keep that record down, but has not succeeded very well. Forty-two different witnesses and exhibits have been presented by the plaintiffs; exhaustive briefs have been filed by both sides consisting of original briefs and amendment briefs and all sorts of briefs which I now hand to the Clerk for inclusion with the papers in the case.

From this exhaustive and somewhat tiresome trial and brief reading, keeping in mind the necessity of the Court's retaining that which was applicable to the issues involved,

Appendix B

I find as facts, gentlemen, that the plaintiffs, Sears, Roebuck and Company, and the Allstate Insurance Company, are engaged, and have been engaged, in the use of the word "Allstate" upon insurance which was neither fire nor life insurance, but was accident and casualty insurance; that the name "Allstate" has been used by the Sears, Roebuck and Company upon a multiplicity of merchandise which it sells in its various stores throughout the northern and central and southern portions of the United States, such as automobile tires, and automobile accessories, and that the business in which it is engaged, or in which both plaintiffs are engaged, is in no sense the business in which the defendant is engaged; the defendant All States Insurance Company is named under the permission of the State Insurance Commissioner, who, under the State law, has that right; that the name "All States" was presented; the plaintiffs objected; the Commissioner overruled that objection, supported by the Attorney General of the State of Texas, and "All States" was granted as the name for the defendant company; that it is engaged only in the life insurance business, and is not engaged in any way in the sale of merchandise.

I further find as a fact that there is no confusion, nor reason for confusion, between what the defendant is engaged in, and what the plaintiffs are engaged in.

As a conclusion of law, gentlemen, I can see no equity whatever in favor of the plaintiffs. It would be most inequitable, and the chancellor would have both eyes and ears and heart closed if it would find that any relief in this case is entitled to the plaintiffs.

Appendix B

OPINION OF THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16291

SEARS, ROEBUCK & COMPANY and ALLSTATE INSURANCE COMPANY,

Appellants,

versus

ALL STATES LIFE INSURANCE COMPANY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

(June 10, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

TUTTLE, Circuit Judge: This is an appeal from a judgment of the trial court, sitting without a jury, denying relief to appellants in an action for injunction and damages for trade mark infringement under the Lanham Act and for alleged unfair competition.

Appellant Sears, Roebuck & Co. is the owner of appellant Allstate Insurance Company. Sears has, since

1927, used the name Allstate to identify numerous of its products, all articles of merchandise, principally automobile tires, parts and accessories, sold in interstate commerce, and had a registered mark in connection with each class of such articles. Allstate Insurance Company was organized by Sears in 1931 and has since that time continuously engaged in the sale in all the states of the United States of policies of automobile and general casualty insurance. Under the laws of Texas it could not engage also in the life insurance business. It was first qualified to do business in the state of Texas in 1936. It registered service marks under the Lanham Act as to (1) the name Allstate and as to (2) a design showing an automobile held in two hands, with the legend "You're in good hands with ALLSTATE." Each of these service marks was specified to relate to "automobile insurance (fire, theft, property damage, personal liability, etc.) in Class 102."

All State Life Insurance Company, having no connection with the appellants, was chartered by the state of Texas on July 1, 1955, to engage in a life insurance business. To the time of the filing of this suit in December 1955 it was engaged in the sale of its common stock to the public. It had not yet undertaken to sell any life policies.

The incorporation of insurance companies and the granting of their right to engage in the insurance business in Texas is a function of the State Board of Insurance Commissioners. The Board is charged with the duty, among others, to determine whether the applicant for a license has selected a name that is not "so similar to that of any other insurance company as to be likely to mislead the

public." A review from this and all other administrative rulings of the Board provided for by the Texas statute.[1] The appellants made formal protest to the Board on October 31, 1955, asserting the grounds later alleged in this suit, and requested the Board "to require All State Life Insurance Company to change its name and select some other name which does not infringe upon and constitute unfair competition with Allstate Insurance Company . . . ."

The Board denied this relief by order dated November 8, 1955, reciting that the action was taken at an official meeting of the Board.[2] No appeal was taken to the District Court of Travis County or to any other court from this ruling of the Board.

In 1928, a life insurance company was organized in Alabama under the name All State Life Insurance Company. By 1931, the year the appellant Allstate Insurance Company was organized, it was doing business in four states, and by 1946 in thirteen states and the District of Columbia. It was licensed to do business in Texas during part of 1937 and 1938. In July 1955 appellee first com-

[1] Article 21.44 of the Insurance Code of Texas provides as follows:

"Except where otherwise provided for under the provisions of the Insurance Code, if any insurance company or other party at interest be dissatisfied with any decision, regulation, order, rate, rule, act, or administrative ruling adopted by the Board of Insurance Commissioners, such dissatisfied company or party at interest after failing to get relief from the Board of Insurance Commissioners, may file a petition setting forth the particular objection to such decision, regulation, order, rate, rule, act, or administrative ruling, or to either or all of them, in the District Court of Travis County, Texas, and not elsewhere, against the Board of Insurance Commissioners as defendant. Said action shall have precedence over all other causes on the docket of a different nature. . . ."

[2] After reciting the contentions of the parties the order concluded: "Now, therefore, premises considered, the Board finds that it is without jurisdiction to grant the relief requested by complainant and complainant's request is hereby denied."

menced negotiations with this company for its purchase, and later, after commencement of this suit, the All State Life Insurance Company transferred all right and interest in and to its name and mark in Texas to appellee, and its principal stockholder also contracted to sell a majority of the stock of the company to appellee, which also bound itself to buy all the remaining shares of the stock.

Appellants urged on the court below and vigorously insist here that their registered trade marks and service marks under the Lanham Act[3] protect them against the use by appellee of the name All States Life Insurance Company and that independently of that statute the use of the name of appellee amounts to unfair competition at common law, diversity of citizenship giving jurisdiction to the Federal courts to enjoin the use and to award damages for past injuries.

The trial court made brief findings of fact and conclusions of law.[4]

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[3] 15 U.S.C.A. c. 22.

[4] In view of their brevity we think it appropriate to quote them in full:

"THE COURT: This case was filed on December 6, 1955, and summons was returned executed on December 7. From that time on, various pleadings were filed by both the defendant and the plaintiff consisting of answers and amendments, interrogatories, and the Rules of Procedure is pretty much covered and exhausted by these various pleadings. On May 14, the Defendant's Amended Motion to Dismiss was filed, and on May 21, that motion was acted on by the Court and overruled. The grounds of that motion to dismiss was that there was no jurisdiction in this Court because the State Court, the State law, gave a forum to which the plaintiffs might go if they desired relief as, to the name which had been granted to the defendant and its assignors by the Insurance Commissioner. The motion was overruled because the Court could not recognize a State Statute which would take away from the Courts its federal jurisdiction for litigation growing out of a diversity of citizenship.

"The Court has been somewhat surprised by the continuous fattening of the record by the parties, especially the plaintiffs,

Appendix B

Appellants present the following four questions which they say are posed by the judgment of the trial court. They are:

"(1) Did the trial court err in holding that All States had not infringed Sears' registered trademark ALLSTATE?

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and has done its best to keep that record down, but has not succeeded very well. Forty-two different witnesses and exhibits have been presented by the plaintiffs; exhaustive briefs have been filed by both sides consisting of original briefs and amendment briefs and all sorts of briefs which I now hand to the Clerk for inclusion with the papers in the case.

"From this exhaustive and somewhat tiresome trial and brief reading, keeping in mind the necessity of the Court's retaining that which was applicable to the issues involved, I find as facts, gentlemen, that the plaintiffs, Sears, Roebuck and Company, and the Allstate Insurance Company, are engaged, and have been engaged, in the use of the word "Allstate" upon insurance which was neither fire nor life insurance, but was accident and casualty insurance; that the name "Allstate has been used by the Sears, Roebuck and Company upon a multiplicity of merchandise which it sells in its various stores through the northern and central and southern portions of the United States, such as automobile tires, and automobile accessories, and that the business in which it is engaged, or in which both plaintiffs are engaged, is in no sense the business in which the defendant is engaged; the defendant All States Insurance Company is named under the permission of the State Insurance Commissioner, who, under the State law, has that right; that the name "All States" was presented; the plaintiffs objected; the Commissioner overruled that objection, supported by the Attorney General of the State of Texas, and "All States" was granted as the name for the defendant company; that it is engaged only in the life insurance business, and is not engaged in any way in the sale of merchandise.

"I further find as a fact that there is no confusion nor reason for confusion, between what the defendant is engaged in, and what the plaintiffs are engaged in.

"As a conclusion of law, gentlemen, I can see no equity whatever in favor of the plaintiffs. It would be most inequitable, and the chancellor would have both eyes and ears and heart closed if it would find that any relief in this case is entitled to the plaintiffs."

"(2) Did the trial court err in holding that All States had not infringed Allstate's registered service marked ALLSTATE?

"(3) Did the trial court err in holding that All States had not unfairly competed with Sears and Allstate in the use of its name?

"(4) Did the trial court err in excluding from the evidence the impartial survey made to determine what, if anything, the public associated with ALLSTATE?"

For convenience these questions will be answered in the order in which they are stated. Although appellants do not clearly distinguish at all times in their brief between alleged infringement of the registered marks and the alleged commission by appellee of acts of unfair competition, they do present these issues separately in their questions, and we shall endeavor to treat them separately. In doing so we shall put aside for the moment two arguments put forward by appellee, but shall indicate the proper disposition of them later. These two arguments are: (1) The action seeks to require appellee insurance company to change its name, and this being a matter confided by the state of Texas to the Board of Insurance Commissioners its unappealed action adverse to the plea of appellants cannot be relitigated here; (2) the Lanham Act has no efficacy as to the regulation of an insurance company in a state whose statutes undertake such regulation (and the approval of a name is an act of regulation) because of the limiting terms of the McCarran Act.[5]

[5] "No act of Congress shall be construed to invalidate, impair or supersede any law enacted by any State for the purpose of regulating the business of insurance" 15 U.S.C.A. §1012(b).

The first question is: Did the trial court err in holding that All States had not infringed Sears' registered trade mark ALLSTATE?

We conclude that this question must be answered in the negative. Strictly as a matter of infringement of the many registered trade marks of Allstate owned by Sears, it is clear that as to the proposed life insurance policies in connection with which appellee intended to use the name All States Life Insurance Company there was no similarity of products. Furthermore, there was no competition between Sears and appellee. Nor was there any real similarity between the registered marks of Sears, taken as a whole, and the name of appellee.[6] In the ordinary sense of the terms the name All States Life Insurance Company is not a "reproduction, counterfeit, copy, or colorable imitation"[7] of the single word "ALLSTATE" or the word "ALLSTATE" imprinted on an outline map of the United States.[8] Is it such a colorable imitation in the peculiar sense in which it is used? No new definition of colorable limitation is contained in the Lanham Act. It simply prohibits the use in commerce of a colorable imitation "in connection with the sale, offering for sale or advertising any goods or services on or in connection with which use is likely to cause confusion or mistake or to deceive purchasers as to the source of origin of such goods or service."

Even if we are to assume that it is not necessary under this law either to prove that the sale of life insurance

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[6] The registered marks outstanding and valid at the time appear to have been the single word ALLSTATE in block letters.

[7] 15 U.S.C.A. §1114(1)(a) (The Lanham Act).

[8] Although expired marks show the word superimposed on such an outline, these marks appear not to be in use at the time of trial.

policies proposed by appellee is a use or sale in commerce (defined by the statute as interstate commerce)[9] or to demonstrate, without reference to likelihood of confusion, that the accused mark or name is in fact a counterfeit, copy or colorable imitation, neither of which do we decide, there is still the requirement that the accused name be one the use of which is "likely to cause confusion or mistake."

The fact that the litigants here are not in competition is not the decisive factor as to the likelihood of confusion. Nor is the complete dissimilarity of the articles in whose sale mark is used—automobile tires, batteries, and accessories and the like on the one hand, and life insurance policies on the other. Neither is the different type of relationship that results from the sale of an article of merchandise of small value on the one side and the sale of a policy of life insurance on the other—a difference somewhat like a difference between two classes of purchasers. But it is clear that all of these circumstances are relevant to the determination of whether there is any real "likelihood" of confusion or mistake. *Philco Corporation* v. *F. & B. Mfg. Co.* (7 Cir.), 170 F. 2d 958, cert. denied, 336 U. S. 945; *Brown & Bigelow* v. *B.B. Pen Co.* (8 Cir.), 181 F. 2d 939. For a case in which this Court found that the allegedly infringing mark was "but a colorable imitation of the head and shoulders of the plaintiff's picture of Johnnie Walker," and which, though the imitation was used on a different article of merchandise (cigars instead of Scotch whiskey) it was held to be a question of fact whether or not there was likelihood of confusion as to the source or origin, see *John Walker &*

[9] On this point, however, see *Pure Foods* v. *Minute Maid Corp.* (5 Cir.), 214 F. 2d 792.

Sons v. *Tampa Cigar Co.* (5 Cir.), 197 F. 2d 72; after the trial court had then determined that there was indeed likelihood of confusion, we affirmed, 222 F. 2d 460. For another case in which this Court held that the mere fact that the second use was in connection with a different article (wine, as contrasted with jams and jellies) does not as a matter of law excuse the infringement when the mark (Bama) is actually copied, see *Chappell* v. *Goltsman* (5 Cir.), 186 F. 2d 215, and see the same case at 197 F. 2d 837, in which after trial and a finding of fact by the trial court that there was no likelihood of confusion, largely because of the difference in articles, we affirmed notwithstanding the identity of the names of the two products. Moreover, it may be appropriate to call attention to the restrictive effect given to the certificates of registration of the several marks of the appellant Sears because of the language of the statute itself. Section 1057(b) provides:

> "§1057. Certificates of registration—Issuance and form. • • •
>
> "(b) A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce *in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.*" (Emphasis added.)
>
> 15 U.S.C.A. §1057(b).

Considering here only the narrow question whether there was infringement of Sears' trade marks, we do not come to the question whether there were other elements of unfair competition. As to the question of infringement,

the statute itself seems to distinguish between cases in which the alleged infringer uses the mark with a different product and those in which he uses it on a competing article, for the marks as such do not carry the statutory presumptions of registrant's exclusive right to use except *as to the goods actually specified* in each certificate of registration. None of these, included insurance. They all related to articles of merchandise.

We conclude that in the case of noncompeting products it remains a question of fact whether there is a *likelihood* of confusion, even where there is an identity or a colorable imitation of names. It should be noted that the Lanham Act provision quoted above requires that confusion, mistake, or deception be "likely," not merely "possible." Here the trial court found as a fact, after hearing oral testimony and on consideration of the conditions prevailing in the insurance industry (including, no doubt, the fact that Sears had made no contention in 1937 or 1938, at which time it had already registered its Allstate mark and was doing business in Texas, that the entry of the All State Life Insurance Company of Alabama on the Texas scene was likely to cause confusion, and the fact that Sears had made no objection to the later entry in twelve other states in which it was using the mark Allstate of the All State Life Insurance Company) that "there is no confusion nor reason for confusion between what the defendant is engaged in and what the plaintiffs are engaged in." Consistent with our views expressed in the above cited cases and in accord with one of the best established principles of appellate procedure, we may not reverse findings of fact by the trial court unless clearly erroneous. This finding was supported by substantial evidence and is not clearly erroneous.

Appendix B

The second question is: Did the trial court err in holding that All State Life Insurance Company had not infringed Allstate's service mark Allstate?

The parties have not discussed in their briefs the circumstance that the service marks registered by Allstate were dated February 21, 1956, several months after the incorporation of appellee. It does appear that the applications for them were filed in March 1952. No cross-claim is filed here seeking a cancellation of the marks, so we treat them as having all the vigor that such registration infuses into them. See section 1057(b), *supra*.

Again it is noted that Allstate makes no effort to point out how any of the presumptions of the statute inure to its benefit as to the underwriting of life insurance, since both service marks specify that they relate to the underwriting of automobile insurance only. It would seem from the terms of the Act itself that none of the presumptions as to the validity of the mark, e.g. that it is not geographical in nature or that it has not been too long in general use to be the subject of protection as the property of appellant, arise in a contest with a user of the same name in connection with different service. Assuming, however, that this is too narrow a construction of the Lanham Act, we think that appellant Allstate's contention here is subject to the same weakness as is that of its owner, Sears, as to the likelihood of confusion.

We first give consideration to the action of the Board of Insurance Commissioners of Texas. Assuming that appellants are correct in their contention that no finality or conclusiveness attaches to the Board's action in approving the name, it must be conceded that in the case of an official state administrative body whose duty it is to regu-

late an industry the findings and decisions of such a body in the field of its responsibilities is persuasive and certainly relevant in the determination of the same fact by a trial court. Moreover, it cannot be seriously contended that the insurance board did not have the duty to pass on this precise matter. The statute specifically stated that the name of an applicant insurance company must not be one "likely to mislead the public."[10]

After some objection had been made to two other names, and some also as to the one finally approved, the Board certified appellee with the explanation that the difference in lines of insurance of Allstate and All State Life would distinguish the companies. Appellee sought to bolster this decision of the Board by tendering in evidence a list of insurance companies that had been certified to do business in the state of Texas. On objection to the relevancy and materiality of this evidence it was ruled out by the court. No objection was made as to its authenticity or form. It was brought up by stipulation. We think it was both material and relevant. Since it supports the finding of fact by the trial court and the effect of holding that it should be admitted would be merely to add weight to what the trial court did, we shall consider it as in evidence. Moreover, appellants in their brief refer to it as though it were in evidence. Its relevancy lies in the fact that it clearly discloses that in the insurance business in Texas a great similarity in the names of different companies is not considered a cause of confusion so long as the companies are not competing in the same line of insurance or so long as the names indicate different lines from those already certified. Thus,

[10] V.A.T.S., Insurance Code, Art. 2.02.

for instance, there are in Texas twelve insurance companies operating under a name of which the dominant and initial word is "American." There are eleven companies selling insurance whose principal title word is "State" or "States"; three wholly unconnected companies with the name "Atlas"; four called "Northwestern"; four "Phoenix"; nine "Southwest" or "Southwestern"; and six "Standard." The list shows seventy groups of insurance companies in which each group contains two or more companies with names identical or at least as similar as Allstate and All States.

The language of the district court in *Standard Accident Insurance Co.* v. *Standard Surety and Casualty Co.* (S.D.N.Y.), 53 F. 2d 119, is pertinent to the inquiry as to the propriety of the use of similar names of insurance companies even when they are in direct competition. The court said:

> "The defendant . . . proved that the insurance commissioners in the forty-three states where it applied for licenses under its present name unanimously granted them notwithstanding the plaintiff had previously been granted a license in each of the states. There were thus uniform rulings by the forty-three insurance departments that the two names were not so similar as to result in unfair competition. In several of the states the rulings were made over the active opposition of the plaintiff. While these determinations are of course not binding on the court, they are of weight because they express the opinion of disinterested public officers whose duty it was to prevent the alleged wrong, and who, presumably, were familiar with the business." 53 F. 2d at 121.

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Undoubtedly the Texas Insurance Commission was justified in considering the apparently universal practice in the insurance industry of distinguishing between companies by differentiating between the lines of insurance carried. That a determination by such an administrative tribunal is of great relevance and should be given great weight in a regulated industry, see also *Central Mutual Auto Ins. Co.* v. *Central Mutual Insurance Company*, 275 Mich. 554, 267 N.W. 733.

In addition to the weight to be given to the determination by the Board there was affirmative evidence to support the trial court's finding that there was no likelihood of confusion as to the source of the insurance policies to be sold by appellee. It was undisputed that appellant Allstate took no action to prevent confusion when All State Life Insurance Company of Alabama entered thirteen states in which Allstate was already selling its lines of insurance. When asked on cross-examination as to whether he received a sufficient number of misdirected letters to cause him to protest or to complain to the Alabama corporation, the Director of Allstate Insurance Company, who was called by appellant to testify as to its business, answered: "*There was nothing we could protest to them; it was not their fault;* we merely forwarded them on." (Emphasis added.) He further stated that his company had never protested the licensing of the Alabama corporation in the various states where it had been licensed.

The President of the Alabama corporation testified that during all the years when it and Allstate had both operated in several states concurrently there had been only one occasion of confusion with which he was familiar.

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In that instance a court summons directed to appellant Allstate had been erroneously served on his company.

Appellants produced a number of witnesses whose testimony was to the effect that when they heard of the sale of All States Life Insurance Company stock they associated this activity in their minds with appellants. In each instance, however, they did no more than inquire as to whether there was any real connection. There was some testimony that stock salesmen of the underwriter selling the stock had at least impliedly represented that the appellee was connected with appellant. This was the act of the individual representative of an independent contractor and not anything inherent in the name itself. The court apparently found that such sporadic acts were not chargeable to the appellee. The possibility of confusion certainly existed, but we believe it permissible for the trial court to have rejected the contention that confusion was likely. Moreover, no proof was offered to indicate that any single transaction testified to resulted in any ultimate loss or danger of loss to appellants. We think it clear, as we did in *Chappell* v. *Goltsman*, *supra*, that the similarity of the names even with the inclusion in appellee's name of the word "Life," together with the evidence introduced on the trial, would have been sufficient to authorize a finding by the trial court of the possibility and perhaps even of the likelihood of confusion. This is quite different, however, from our being justified in reversing the findings of the trial court made on ample evidence, including the actions of the State Insurance Board, as clearly erroneously. We conclude that no error was committed by the trial court in finding that there was no infringement of appellant Allstate's service marks.

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The third question is: Did the trial court err in holding that All State Life Insurance Company had not unfairly competed with Sears and Allstate in the use of its name. In answering this question we need not answer the threshold question as to whether the Lanham Act itself created a new federal right of action for unfair competition unless we conclude that such a federal right would differ from the Texas common-law action for unfair competition, and that if both causes of action exist this still remains an area in which the state law would be applied under the rule of *Erie R.R.* v. *Tompkins*, 304 U.S. 64. We pretermit these interesting and complicated questions[11] because we conclude that there was sufficient evidence on which the trial court could find as it did that there was no confusion or reason for confusion between the activities of the two insurance companies which would satisfy the concept of unfair competition asserted by appellants. *A fortiori*, we do not need to consider whether appellants made out a case of fraudulent action by defendants, which appellee contends is required to establish unfair competition in Texas.

In spite of the frequent confusion in the treatment of trade or service mark infringement cases and those involving unfair competition all parties to this litigation recognize that in addition to the right to protection against the infringement of their trade or service marks appellants also have the right to protect themselves from acts of the defendant by which the latter would "unfairly" appropriate to itself any of the good will that belongs as a species of property to the appellants in the

[11] Discussed at some length in Comment: "Erie Limited: The Confines of State Law in the Federal Courts," 40 Cornell L.Q. 561, 571-74, and in the cases and writings there cited.

state of Texas. Whether an accused party is so appropriating or attempting to appropriate, with likelihood of success, such valuable property of the complainant is, of course, a question of fact. *Chappell* v. *Goltsman, supra; John Walker & Sons* v. *Tampa Cigar Company, supra.* The finding by the trial court "that there is no confusion, no reason for confusion, between what the defendant is engaged in, and what the plaintiffs are engaged in" undercuts completely any contention that there exists any unfair competition if such finding is adequately supported in the record, for if there can be no confusion under the facts of this case then, of course, there can be no trading by appellee on appellants' good will. We think the facts heretofore outlined in considering the previous questions demonstrate that the trial court's findings are so adequately supported as to make it impossible for us to hold that its decision was clearly erroneous.

We next come to the fourth question: Did the trial court err in excluding the document tendered as an impartial survey made to determine what if anything the public associated with Allstate. Tendered in support of its contention that the use of appellee's name was likely to confuse the public as to the source of insurance policies to be issued by it, the survey was excluded by the trial court on its own motion on the ground that it was hearsay. Its author testified that he had caused ten interviewers to telephone 100 impartially selected telephone subscribers each and ask them a series of questions. The questions were:

"(1) What comes to your mind when I say the brand name 'Westinghouse'?

(2) What does the brand 'Kodak' mean to you?

(3) What does 'Allstate' mean to you?

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(4) If you wanted Allstate insurance, where would you go?

(5) Have you ever heard of All State Life Insurance Company?

(6) Who would you say owns All State Life Insurance Company?"

Of course, this survey if otherwise admissible was not excludable as hearsay merely because the 1000 interviewed persons were not themselves testifying, since it was not intended to prove the truth of the statements made by them. However, it was inadmissible as heresay because it was offered to prove what ten interviewers say they were told by the persons questioned. Appellants do not take exception here to the refusal of the trial court to let them put "several" of the interviewers on the stand to explain how they conducted the survey. They complain only of the action of the court in ruling the survey inadmissible. A casual glance at the survey itself shows it to contain self-serving statements in the summaries which it includes. Furthermore, although this was not the ground on which the court rejected it, it appears that it would be inadmissible on the ground of irrelevance, as not fairly presenting the name All States Life Insurance Company until after two questions had been asked which if correctly and properly answered called to mind Sears, Roebuck & Company. We think it not truly illustrative of what the public thinks to permit one party to propound questions chosen on its behalf, however fairly attempted, with no opportunity given to the other party to test the answers given by the persons interviewed. Most of the witnesses produced by appellants at the trial itself to give their impressions as

to likelihood of confusion were cross-examined by appellee; this resulted in bringing before the court a much clearer picture of what their reactions really were. We think it was not error for the trial court to rule out this survey.

It will now become apparent that we conclude that the judgment of the trial court must be affirmed without the necessity of passing on the two points raised by appellees as to the binding effect of the Board's action and as to the limiting effect on the Lanham Act of the McCarran Act. However, we think it appropriate to state our views as to these matters. We do not think the entire cause of action alleged by appellants, derived primarily from federal statutes, can be controlled by the determination of the Board of Insurance Commissioners, as is suggested by appellees. We also conclude that there is nothing in the McCarran Act that limits the right of the owner of a trade or service name to seek redress in the federal courts merely because the approval of the name of the infringing insurance company is part of the duties of the state board. The real purpose of the McCarran Act is too well known to permit us to extend its prohibitions to this situation:

> "Respondents, on the other hand, seek to derive support for reliance on the Louisiana statute from the McCarran Act. . . . Suffice it to say that even the most cursory reading of the legislative history of this enactment makes it clear that its exclusive purpose was to counteract any adverse effect that this Court's decision, in *United States* v. *South-Eastern Underwriters Association* . . . might be found to have on State regulation of insurance."

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Maryland Casualty Co. v. *Cushing*, 347 U.S. 409, 412-13.

No matter what approach is taken to the questions presented for decision here, it is undisputed that infringement and unfair competition are matters of fact. They cannot be found to exist merely from the similarity in names, especially where the names are used in relation to different products. The record contains sufficient evidence of probative value to sustain the trial court's finding that no infringement or unfair competition was proved.

Of course the judgment of the trial court does not foreclose any future action if, in fact, the appellee should so conduct its life insurance business as to mislead its prospective customers into the belief that All State Life Insurance Company is backed by or is connected with Sears, Roebuck & Company. All that has been held thus far is that no such conduct had occurred to the date of the trial below.

The judgment is AFFIRMED.

JONES, Circuit Judge, Dissenting:

It seems to me that the findings of the district court come near to negativing its conclusion that there is no confusion or reason for confusion between what the defendant is engaged in and what the plaintiffs are engaged in. To stress the slight difference in the names of the two insurance companies is to beg the question. To consider the similarity of names of other insurance companies is to invoke immaterial comparisons. I agree that

whether an accused party is appropriating or attempting to appropriate the good will and the good name of another is a question of fact. The excluded evidence of the results of the survey should, I think, have been admitted as bearing upon that issue. The reasons given by the majority for rejecting the evidence should, in my opinion, go to its weight and not to its admissibility. I respectfully dissent.

Judgment of the Court of Appeals

Extract from the Minutes of June 10, 1957.

SEARS, ROEBUCK & COMPANY and
ALLSTATE INSURANCE COMPANY,

No. 16291.

versus

ALL STATES LIFE INSURANCE COMPANY.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Sears, Roebuck & Company and Allstate Insurance Company, and the surety on the supersedeas bond herein, American Motorists Insurance Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Jones, Circuit Judge, dissenting."

Office - Supreme Court, U.S.
FILED
NOV 20 1957
JOHN T. FEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM, 1957

No. 544

SEARS, ROEBUCK & COMPANY AND ALLSTATE INSURANCE COMPANY,
Petitioners,

v.

ALL STATES LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR RESPONDENT IN OPPOSITION

PAUL CARRINGTON,
FRANK G. NEWMAN,
OTIS B. GARY,
1900 Mercantile Bank Bldg.,
Dallas, Texas,
Attorneys for Respondent.

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is not reported except in the form of footnote 4 to the majority opinion of the Court of Appeals and is printed in Appendix B of the Petition, page 3a.

The opinion and dissenting opinion of the Court of Appeals, which are printed in Appendix B of the Petition, pages 5a and 24a, are reported at *246 F. 2d 161*.

Petitioners have copied in their Appendix B the opinion of the Court of Appeals before certain printing errors were

corrected, as is shown by comparison of Appendix B of the Petition (pages 5a-24a) and the opinion as reported at *246 F. 2d 161*.

STATUTES AND RULE INVOLVED

The statutes relied upon by Petitioners are Sections 7(b) and 32(l) of the Lanham Act, 60 Stat. 427, 15 U. S. C., Sections 1057(b) and 1114(l), and Rule 52(a) of the Federal Rules of Civil Procedure, 28 U. S. C. following Section 2072. (Appendix A of the Petition, pages 1a, 2a.)

STATEMENT

This action was instituted by Petitioners for the primary purpose of preventing Respondent from using its corporate name, All States Life Insurance Company (Complaint, R. 8).

Respondent was duly incorporated under the Insurance Code of Texas (Plaintiffs' Exhibit 7; R. 118) which provides, in part, that "the name of the company * * * shall not be so similar to that of any other insurance company as to be likely to mislead the public." Article 2,02, Insurance Code of Texas. On July 25, 1955, the Insurance Commission of Texas issued its certificate to Respondent allowing it to operate as a life insurance company in Texas under its chosen corporate name (Defendant's Exhibit 7, R. 305).

Some months later, Petitioners protested the action of the Texas Board of Insurance Commissioners in approving Respondent's corporate name; the grounds of such protest

being that it was so similar to that of Allstate Insurance Company as to mislead the public (Defendant's Exhibit 8; R. 417, 306).

After consideration of Petitioners' protest, the Texas Board of Insurance Commissioners refused to withdraw its approval and denied relief (Defendant's Exhibit 9; R. 421-22; R. 306; Defendant's Exhibit 10; R. 371-74; R. 306).

That was the first of the three determinations which Petitioners have now had concerning the merits of their contentions in regard to Respondent's corporate name.

Although Article 21.44 of the Texas Insurance Code (see footnote 1 of the opinion of the Court of Appeals, Appendix B of the Petition, page 7a) provides judicial review of administrative determinations of the Insurance Commission, Petitioners did not avail themselves of it.

This action was subesquently filed by Petitioners in the United States District Court for the Northern District of Texas to require Respondent to change its corporate name, upon the grounds of alleged unfair competition and alleged trademark infringement.

The record in the District Court clearly reflects that Petitioner Sears, Roebuck & Company has numerous existing and expired trademarks involving the word "Allstate," but uses such word only for motor vehicle parts, products and accessories (R. 148) and that Petitioner Allstate Insurance Company registered and uses "Allstate" only in regard to automobile casualty insurance (R. 13-20, 353; Appendix B of the Petition, page 6a, lines 5-9).

The evidence also shows that the law of Texas, as well as that of most states, prohibits a life insurance company from engaging in the casualty insurance business and vice versa (R. 277, 239, 299; Appendix B of the Petition, page 6a, lines 9, 10).

Since 1928, a life insurance company has been in existence in Alabama using the name All States Life Insurance Company, the identical corporate name used by Respondent. At one time, Petitioner Allstate and the Alabama company were concurrently licensed to do business in fourteen states (Stipulation, R. 353-355), and Petitioners never protested the licensing of that company in any of these states. (R. 157.)

Respondents' president testified that one reason for choosing Respondent's name was that he hoped to take over the Alabama company (R. 333), toward which steps were taken shortly after Respondent was licensed (R. 324). In pursuance of this proposal, Respondent executed a contract of sale with the Alabama company to acquire controlling interest in it (Defendant's Exhibits 15, 16, 18; R. 322, 323, 335) and also received an assignment of the use of its name and insignia in Texas (Defendant's Exhibits 13 and 14; R. 320-322).

The District Court found that there was no confusion or reason for confusion (Appendix B of the Petition, page 4a), and entered a judgment for Respondent (R. 424, 425). That was the second determination of the results of Petitioners' case.

Petitioners appealed and, after reviewing the decision of the trial court, the Court of Appeals affirmed.

Petitioners then filed a Petition for Rehearing, which was overruled. Thus ended the third determination as to Petitioners' contentions.

ARGUMENT

In this federal litigation Petitioners have sought to change the effect of the administrative decision of the state agency charged with the regulation and supervision of Respondent upon the grounds of alleged unfair competition and alleged trademark infringement. Only the rights of the litigants are involved, and the two lower courts have concurred in the result as it stands. The Court of Appeals carefully weighed the evidence supporting the findings of the District Court and affirmed.[1] There is no special or important reason for this Honorable Court to review the decision which is based entirely upon factual evidence and does not depend upon any issue of law.

A. We first turn to Petitioners' contention in their point A that the decision of the Fifth Circuit is in conflict with *Sears, Roebuck and Co. v. Johnson, 219 F. 2d 590*, by the Third Circuit, and with opinions of other circuits which Petitioners contend agree with it as to Rule 52(a). It is submitted that there is no real conflict.

---

[1] As this Court has stated: "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co. v. Linde Air Products Co., 336 U. S. 271, 275 (1949).* See also *Pick Mfg. Co. v. General Motors Corp., 299 U. S. 3 (1936); 5 Moore's Federal Practice, 2nd Ed., Section 52.12, page 2690.*

In trademark infringement cases where "reproduction, counterfeit, copy or colorable imitation" has been proven[2] the owner of the trademark has the burden of proving likelihood of confusion, mistake or deceit. We feel that it is well settled that such issues are entirely factual and no authority has been cited by Petitioners to the contrary. Rule 52(a) was promulgated to prescribe the scope of review by appellate courts as to all fact findings of trial courts sitting without juries. Its terms are plain. It does not distinguish between different "classes'" of facts, such as "basic" or "ultimate," as the opinion of the Third Circuit purports to do, but concerns itself only with "findings of fact."

It is submitted that the same basic appellate reviewing process was utilized by the Third Circuit in the *Johnson* case as that used by the Fifth Circuit in the instant case,[3] notwithstanding that one opinion states that what its author conceives to be "ultimate facts" are beyond the "clearly erroneous" test of Rule 52(a), and the other opinion states that all findings of fact by the trial court are binding on the appellate court unless clearly erroneous. The test of

[2]In this connection see opinion of the Circuit Court, Appendix B of the Petition, page 11a.

[3]Petitioners would give the impression that the Fifth Circuit failed to review the facts in the instant case and summarily affirmed the District Court out of blind loyalty to Rule 52(a). Even a cursory reading of the opinion will reveal the contrary. The appellate court carefully reviewed nd weighed the evidence and repeatedly said that the findings were supported by the evidence (Appendix B of the Petition, page 14a, line 32, "substantial evidence"; 19a, line 29, "ample evidence"; 20a, lines 13 and 14, "sufficient evidence"; 21a, lines 15 and 16, "so adequately supported as to make it impossible to hold that its decision was clearly erroneous"; 19a, lines 30 and 31, "We conclude that *no error* was committed by the trial court in finding that there was no infringement of Appellant Allstate's service marks"). (Emphasis added.)

"clearly erroneous" was announced by this Court in *United States v. United States Gypsum Co., 333 U. S. 364, 393-395 (1948)*. There, this Court held:

> "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed."

Both the Third and Fifth Circuits in the decisions involved undertook to review the *entire* record to determine if they were left with the conviction that a mistake had been committed. Respondent does not believe that the *Johnson* case represents a departure from the appellate process dictated by Rule 52(a) as interpreted by this Court in *Gypsum*. The Third Circuit, no less than this Court and the Fifth Circuit, will not reverse unless it is left with the firm conviction from the record as a whole that a mistake has been committed. Convinced that the whole record supported a conclusion opposite to that held by the trial court on the pivotal fact in issue, the Third Circuit reversed in the *Johnson* case. Convinced that the record on the whole supported the Trial Judge's finding, the Fifth Circuit in the instant case affirmed. Though there be conflict in the language in *opinions*, it is submitted that there is no conflict in the *decisions* or the approach of each court to the discharge of its duty of review.

If Respondent's analysis is correct, this would seem to be, at best, merely one of those questions of "scholarly interest" which this Honorable Court has recently announced it will not hear; there being involved only mental

satisfaction. *Rice v. Sioux City Cemetery, 349 U. S. 70, 74 (1955)*. In that case, the rule was announced *(349 U. S. at page 74)*:

> " 'Special and important reasons' imply a reach to a problem beyond the academic or episodic."

If Respondent is mistaken, and there is a real difference in the scope of review exercised by the Third and Fifth Circuits, respectively, then it is the Third Circuit and not the Fifth Circuit which is in conflict with the clear terms of Rule 52(a) and with the intention of the Advisory Committee which promulgated the rule. The Advisory Committee announced, in regard to the "clearly erroneous" provision:

> "The rule stated in the third sentence of Subdivision (a) accords with the decisions on the scope of the review in modern federal equity practice. It is applicable to *all classes* of findings in cases tried without a jury whether the finding is of a fact concerning which there was conflict of testimony or of a fact deduced or inferred from uncontradicted testimony."[1] (Emphasis added.)

Moreover, if the reviewing process is different in the Third and Fifth Circuits, then the Third Circuit is also in conflict with the decisions of this Honorable Court, as will be demonstrated. In the *Johnson* case no evidence was adduced by the defendant. Most of the facts were therefore undisputed. However, the trial court found that there was no likelihood of confusion and upon appeal the Circuit

[1] *Final Report of the Advisory Committee on Rules for Civil Procedure* —November, 1937. Found also in 28 U. S. C. A. following Rule 52.

Court said, in overruling defendant-appellee's contention that Rule 52(a) was applicable to the finding of no likelihood of confusion:

> "* * * In disturbing a district court's findings of basic facts, this court is guided by the 'clearly erroneous' provision of Rule 52(a). But Rule 52(a) is not applicable where, as here, the dispute is not as to the basic facts, but as to what inference (i.e., ultimate fact) should reasonably be derived from the basic facts." (Emphasis added.)

This Court, however, has held to the contrary. In *United States v. United States Gypsum Co., 333 U. S. 364, 393-395 (1948)*, this Court, in reviewing the case on appeal as the primary appellate court, said:

> "We turn now to a different phase of the case—the correctness of the findings * * *."
>
> * * * * * *
>
> "* * * In so far as this finding and others to which we shall refer are *inferences* drawn from documents or undisputed facts, heretofore described or set out, Rule 52(a) of the Rules of Civil Procedure is applicable. That rule prescribes that findings of fact in actions tried without a jury 'shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses.' It was intended, in all actions tried upon the facts without a jury, to make applicable the then prevailing equity practice. Since judicial review of findings of trial courts does not have the statutory or constitutional limitations on judicial review of findings by administrative agencies or by a jury, this Court may reverse findings of fact by a trial court where 'clearly erroneous'." (Emphasis added.)

The rule announced in *United States Gypsum* has been uniformly followed by this Court, *United States v. Yellow Cab Co., 338 U. S. 338, 341, 342 (1949); United States v. Oregon State Medical Society, 343 U. S. 326, 339 (1952); United States v. E. I. DuPont de Nemours, 351 U. S. 377, 381 (1956).*

The Fifth Circuit, in the instant case, has followed Rule 52(a) and the interpretation of this Court to the letter. Assuming arguendo that opinions in other circuits are not in harmony, it is respectfully submitted that this Court should not review an errorless judgment which has followed its decisions, merely to repeat once again that Rule 52(a) means precisely what it says.

In this connection, Respondent would make another observation. The evidence heard by the District Court consisted in large part of oral testimony adduced by each side, and Rule 52(a) admonishes that due regard is to be given to the trial court's opportunity to judge credibility. The Fifth Circuit has done so.

Respondent regrets that Petitioners have chosen to castigate the District Judge and to denominate his decision as a travesty. Such a statement by Petitioners is unwarranted. The record in this case contains 424 pages of pleadings, testimony and exhibits, in addition to which there were fifty-one original exhibits sent to the Court of Appeals and now to this Court. (R. 430; Petitioners' designation of the record.) The Petitioners adduced oral testimony from sixteen witnesses and introduced portions of depositions

from eleven others, while Respondent had nine witnesses and introduced deposition evidence of three other witnesses. All parties filed "exhaustive briefs" which were considered by the District Court. (See Opinion, Appendix B to Petitioners' Brief, page 3a.) In this connection, the following language from *United States v. Yellow Cab Co., 338 U. S. 338, 340-342 (1949)*, seems particularly appropos:

> "What the government asks, in effect, is that we try the case *de novo* on the record, reject nearly all of the findings of the trial court, and substitute contrary findings of our own.
>
> "'* * * The Government relied in large part on inferences from its 485 exhibits, introduced by nine witnesses. The defendants relied heavily on oral testimony to contradict those inferences.'"
>
> * * * * * *
>
> "'* * * While, of course, it would be our duty to correct clear error, even in findings of fact, the Government has failed to establish any greater grievance here than it might have in any case where the evidence would support a conclusion either way but where the trial court has decided it to weigh more heavily for the defendants. Such a choice between two permissible views of the weight of the evidence is not 'clearly erroneous'."

For these reasons, Respondent submits that Petitioners' first point is not well taken.

B. Replying to Petitioners' second contention in their point B, the decision of the Fifth Circuit did not, as contended by Petitioners, give controlling significance to the absence of actual competition between the parties. To so

contend, we think, is to ignore the clear language used by the Court:

> "The fact that the litigants are not in competition is *not* the decisive factor as to the likelihood of confusion." (Emphasis added.) (Appendix A of the Petition, page 12a, lines 9 and 10.)

The Court pointed out that competition is only one of the relevant factors bearing on likelihood of confusion. It also discussed two of its other decisions which held that competition is not of controlling importance.

There is certainly no conflict between this decision and that of the Third Circuit in the *Johnson* case as to the importance of competition in determining the scope of trademark protection. The very language quoted from that opinion at page 18 of the Petition clearly shows that the two cases are completely in accord. They both hold that competition, while a factor in determining whether there is confusion, is not controlling.

Nor did the Fifth Circuit hold, as contended by Petitioners, that Section 7(b) of the Lanham Act carries the statutory presumptions only as to goods actually specified in the certificate of registration. That part of the opinion quoted out of context at page 16 of the Petition is perhaps misleading.[3]

[3] The Court prefaced that statement with the cogent observation that "the statute itself seems to distinguish between cases in which the alleged infringer uses the mark with a different product and those in which he uses it on a competing article * * *." (Appendix B of the Petition, page 14a.)

iat the Court expressly reserved decision on that sub-
is shown in its opinion:

"Assuming, however, that this is too narrow a construction of the Lanham Act, we think that appellant Allstate's contention here is subject to the same weakness as is that of its owner, Sears, as to likelihood of confusion." (Appendix B of the Petition, page 15a, lines 22-26.)

is thus seen from the language of the opinion itself the two premises relied on by Petitioners to sustain second point are non-existent.

espondent will not follow Petitioners into the merits he case and review all the evidence which the trial t had before him, as was done in Respondent's brief re the Fifth Circuit. The opinion of the Circuit Court be referred to in that regard, for it discussed parts of evidence at some length.

or will Respondent lengthen this brief with a discus- of all the cases cited by Petitioners in their attempt to a conflict among several of the Circuits.

ven if Petitioners' contention were correct that there three, or even if there were thirty lines of authority ng the Circuit Courts in determining the test of in- gement, rather than criteria which shade into one her, and even if we assumed that this case presented

ost of the misdirected letters and telephone calls referred to (R. 1), which constituted a "very small percentage" of the total mail alls received by Petitioner Allstate (R. 205-206), occurred before ndent's name appeared in the November, 1955, telephone directory 05, 206). "Moreover, no proof was offered to indicate that a single action testified to resulted in any ultimate loss or danger of loss to ants." Opinion of Circuit Court, Appendix B of the Petition, page nes 18-20.

such issue, it seems clear that, because of the special field of service and the particular facts involved herein, this case does not present any such issue in a manner that could be considered of general importance and application in the trademark field.

Certainly, the likelihood of confusion in the factual instances of each purely trademark case must be viewed in the light of the particular circumstances involved.

However, the lower courts in this case considered not only those factors which are usually considered in determining likelihood of confusion but also considered the special industry involved and the customs and practices therein. The Circuit Court noted "that in the insurance business in Texas a great similarity in the names of different companies is not considered a cause of confusion so long as the names indicate different lines from those already certified" (Appendix B of the Petition, page 16a, lines 26-31), and referred to the "apparently universal practice in the insurance industry of distinguishing between companies by differentiating between the lines of insurance carried." (Appendix B of the Petition, page 18a, lines 2-4.)[1]

[1] Petitioner Allstate has urged that because of its sales facilities at department stores and through catalogs the reliance by the Court below on similarities between the names of other existing insurance companies was misplaced. (Page 15, first footnote, Petition.) This contention seems to ignore the provisions of the state law which provide that any person who solicits insurance, or transmits an application, or receives or delivers a policy, or examines a risk, or collects or transmits a premium, or does or perform "any other act or thing in the making or consummating of any contract of insurance" is deemed an agent of the insurance company for whom such service is performed and must procure a certificate of authority from the Board of Insurance Commissioners before performing any such functions. Article 21.01, 21.02, Texas Insurance Code. See also Chapter 21 of this Code for the examination requirements as to agents and the prohibitions against misrepresentation, unfair competition and deceptive acts in the business of insurance.

In addition, the particular facts in this case concerning prior use by an Alabama company with a name identical to that of Respondent and without protest by Petitioners (R. 157) distinguishes this case from the usual trademark case.

Petitioners have urged this Court to accept this case for the purpose of writing an opinion to serve as a guide for the Circuit Courts in the application and interpretation of the Lanham Act. It should be noted that Petitioners have not properly invoked the Lanham Act in this case, because they failed to plead or prove that Respondent's activities are either "in commerce", or that they burden or affect "commerce."[5] Even if the Act were in issue here, this case would scarcely be the appropriate vehicle for the type of guiding decision which Petitioners assert is needed, for this case involves the customs and usages of the specialized insurance industry and in it the effort has been made to prevent Respondent from using its corporate name, chosen and confirmed by the state administrative agency to be properly available to it, in accordance with such customs and usages of the industry.

Respondent submits that the decision below is clearly correct. The case was fully tried and has had careful appellate review. Two courts have concurred in the result, which is based on the particular facts involved, and there is no special or important reason for this Court to review it.

[5] That it was incumbent upon them to do so to be entitled to remedies under the Lanham Act, see *U. S. Printing & Lithograph Company v. Griggs, Cooper & Co.*, 279 U. S. 156. The Lanham Act defines "commerce" as "all commerce which may lawfully be regulated by commerce." 15 U. S. C. A., Sec. 1127.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

PAUL CARRINGTON,
FRANK G. NEWMAN,
OTIS B. GARY,
1900 Mercantile Bank Bldg.,
Dallas, Texas,
Attorneys for Respondent.